United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7452

United States Court of Appeals
For the Second Circuit

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs-Appellees,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants-Appellees,

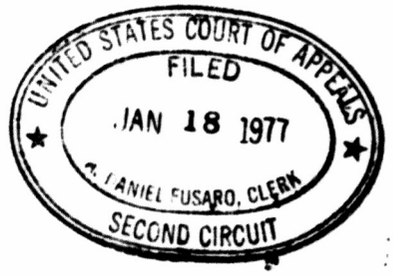
-against-

GUARDIAN MANAGEMENT, S.A.,

Claimant-Appellant,

SAMUEL H. SLOAN,

Member of the Class-Appellant.



On Appeal from the United States District Court Southern District of New York,

JOINT APPENDIX

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TABLE OF CONTENTS

	Page
DOCKET ENTRIES	
PLAINTIFF'S MOTION TO ADD A PARTY PLAINTIFF; MEMO ENDORSED, LASKER, DATED 12/11/74 (Pages A1-A2)	A1
ORDER DATED JULY 9, 1975 (WITH RESPECT TO HEARING ON PROPOSED SETTLEMENT AND CLASS ACTION CERTIFICATION) (Pages A3-A7)	A3
STIPULATION OF SETTLEMENT DATED JULY 9, 1975	A8
AFFIDAVIT OF ROBERT M. KORNREICH DATED JULY 9, 1975 IN SUPPORT OF PROPOSED ORDER (Pages A9-A56)	A9
STIPULATION THAT DEFENDANTS' ANSWERS TO COMPLAINT SHALL CONSTITUTE THEIR ANSWERS TO THE AMENDED COMPLAINT. SO ORDERED.	A57
AFFIDAVIT, NOTICE OF APPEARANCE AND MEMO OF LAW IN OPPOSITION TO THE PROPOSED SETTLEMENT BY SAMUEL H. SLOAN (Pages A58-A71)	A58
NOTICE OF INTENTION TO APPEAR AT SETTLEMENT HEARING BY EDWARD I. FRIEDMAN (Pages A72-A79)	A72
OBJECTIONS TO PROPOSED SETTLEMENT BY DOROTHY AND MORRIS KLEIN (Pages A80-A83)	A80
AFFIDAVIT OF ROBERT M. KORNREICH DATED JANUARY 14, 1975 IN SUPPORT OF CLASS ACTION MOTION (Pages A84-A91)	A84
AFFIDAVIT OF DEFENDANT CANADIAN JAVELIN LTD. DATED JANUARY 20, 1975 CONSENTING TO PRELIMINARY DETERMINATION OF CLASS ACTION (Pages A92-A93)	A92
DIAMOND & GOLOMB LETTER AUTHORIZING PICK-UP OF CLAIMS	A94
AFFIDAVIT OF BENEDICT WOLF DATED OCTOBER 8, 1975 IN SUPPORT OF PROPOSED SETTLEMENT (Pages A95-A134)	A95

	Page
AFFIDAVIT OF P.J. DE SANTIS DATED OCTOBER 8, 1975 AND EXHIBITS THERETO (Pages A135-A151)	A135
SUPPLEMENTAL AFFIDAVIT OF BENEDICT WOLF IN SUPPORT OF PROPOSED SETTLEMENT (Pages A152-A163)	A152
ADDITIONAL AFFIDAVIT OF BENEDICT WOLF (Pages A164-A170)	A164
AFFIDAVIT OF ROGER F. MURRAY DATED OCTOBER 17, 1975 (Pages A171-A174)	A171
AFFIDAVIT OF BENEDICT WOLF DATED NOVEMBER 17, 1975 (Pages A175-A179)	A175
SUPPLEMENTARY AFFIDAVIT OF ROGER F. MURRAY (Pages A180-A190)	A180
MOTION OF OBJECTORS FOR LEAVE TO FILE RESPONSE TO THE AFFIDAVIT OF BENEDICT WOLF? MEMO ENDORSEMENT GRANTING MOTION DATED 7/20/76 BY LASKER, J. (Pages A191-A194)	A191
AFFIDAVIT OF BENEDICT WOLF DATED DECEMBER 3, 1975 (Pages A195-A198)	A195
MOTION BY OBJECTORS LURIE ET AL. REQUESTING ORDER DIRECTING CERTAIN INFORMATION BE MADE AVAILABLE TO THE COURT AND TO OBJECTORS; MEMO ENDORSED BY LASKER, J. DENYING MOTION, 7/20/76 (Pages A199-A212)	A199
AFFIDAVIT OF ROBERT M. KORNREICH DATED APRIL 16, 1976 (Pages A213-A217)	A213
AFFIDAVIT OF IRVING GOLOMB DATED APRIL 16, 1976 (Pages A218-A222)	A218
ORDER DATED APRIL 30, 1976	A223
MOTION OF OBJECTORS' LURIE ET AL. REQUESTING THE COURT TO WITHDRAW ITS OPINION OF JUNE 30, 1976 AND REQUESTING THE COURT TO VACATE ITS APPROVAL OF THE PROPOSED SETTLEMENT; TO REOPEN HEARING ON SAME; THAT NEITHER PROPOSED FINAL ORDER BE APPROVED; AND THAT VARIOUS DOCUMENTS BE MADE PART OF THE RECORD; ENDORSEMENT BY GOETTEL, J. 8/6/76 DENYING SAME (Pages A224-A299)	A224

Page

CONSENT ORDER AND FINAL JUDGMENT (Pages A300-A306) A300

TRANSCRIPT OF PROCEEDINGS BEFORE JUDGE LASKER ON 7/23/76 (Pages A307-A358) A307

NOTICE OF APPEAL A359

EX' A—STIPULATION IN LURIE ET AL V. CANADIAN JAVELIN LTD. FILED OCTOBER 29, 1976 (Pages A360-A379) A360

EX' B—MEMORANDUM DECISION OF JUDGE LASKER DATED MAY 23, 1974 IN THEOFILAKOS V. BRENHOUSE, 73 CIV. 2150 A380

DOCKET ENTRIES (Pages A to H)

JUDGE LASKER

ACTION AS OF 2-10-75

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

73 CIV 517

ATTORNEYS

J. C. Form No. 106 Rev.

TITLE OF CASE

GERTRUDE J. BONIME and
LILLIAN CEDEN, (Added 12-12-74)
vs.
JOHN C. DOYLE,
WILLIAM M. WISMER,
CANADIAN JAVELIN LTD.

1 of 4

For plaintiffs:
Wolf Popper Ross Wolf & Jones
845 Third Ave. NYC 10022 PL 9-1600

Samuel E. Sloan-Pro-Se
917 Old Trents Ferry Rd., Lynchburg, Va
804--384-1207(Member of the Class)

For defendant:
Diamond & Colomb (deft. Canadian Javelin)
99 Park Ave., NYC 10016 - 687-7580

Martin Ozer (defts. Doyle & Wismer)
475 Fifth Ave., NYC 10017 - [illegible]-7789

Michael R. Shehadi
101 Boulevard Ave., Throop Pennsylvania 1851[illegible]

~~CLAIMS & EXCLUSIONS & INQUIRES PICKED UP BY~~
~~PLAINTIFFS ATTYS WEEKLY~~ (as of 9-27-75)

UNITED STATES COURT OF APPEALS
FILED
OCT 13
A. DANIEL FUSARO
CLERK

Rule 23 Alleg ation

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB
J.S. 5 mailed X	Clerk	2/4/73	wo4 1P		
J.S. 6 mailed 9-27	Marshal	12/4/73	[illegible]		
Basis of Action: Violation of S.E.C. Act of 1934	Docket fee				
Action arose at:	Witness fees				
	Depositions				

BEST COPY AVAILABLE

#2 73 CIV. 5117

PROCEEDINGS

3-73 Filed complaint & issued summons.
6-73 Filed certificate of mailing summons and complaint to.
Mr. William M.Wismer
Canadian Javelin Ltd.
1115 Sherbrooke St.,W.,Suit 2900
Montreal,Quebec # 547127
Canadian Javelin Ltd.
1115 Sherbrooke St.W,Suite 2900
Montreal,Quebec # 547126
and
Mr. John C.Doyle
Canadian Javelin Ltd.
1115 Sherbrooke St.W,Suit 2900
Montreal,Quebec # 547128
9-74 Filed stip. & order extending time for defts. Doyle & Wismer to answer to 1-31-74--MacMahon,J.
9-74 Filed stip. & order extending time for deft. Canadian Javelin Ltd. to answer to 1-31-74-- MacMahon,J.
Filed pltff's request for production of documents.
20-74 Filed pltff's notice to take deposition of deft. Canadian Javelin Ltd.
20-74 Filed ANSWER of deft. Canadian Javelin Ltd.
25-74 Filed ANSWER of defts. John C. Doyle & William M. Wismer
Filed stip. & order extending defts' time to answer to 2-21-74--MacMahon,J.
Filed stip. & order extending defts' time to produce documents to 4-15-74--MacMahon,J.
10-74 Filed pltffs affdvt & notice of motion directing that a class action determination be made before July 15, 1974. Ret. 4-15-74.
15-74 Filed defts. Canadian Javelin response to pltfs. request for production of documents.
Filed memo endorsed on motion. Filed 4-10-74--motion re: class determination is granted. Pltff. is directed to move for class action determination on or before 7-15-74--So ordered--MacMahon,J.-mailed notice.
May 31-74 Filed deft (Canadian Javelin) request for production of documents.
May 31-74 Filed deft (Canadian) first interrogs. to pltff.
18-74 Filed Stip & Order extending to 9-30-74 time for pltff to make a motion for class action determination.
Oct.4-74 Filed pltffs notice to take deposition Wm. M. Wismer.
Oct 18-74 Filed Pltff's Notice to take dposition of parties listed..
Oct 28-74 Case reassigned to Judge Lasker.
Nov 15-74 Filed Stip. & Order that the time which pltff may make a motion for class action determination is extended to 12-31-74...Lasker, J.
Nov 27-74 Filed Pltff's Notice of Motion to add a party Pltff...ret. 12-6-74.
Dec 12-74 Filed Memo-End on Motion Filed 11-27-74...No opposition having been filed to this motion on or before the return date, the motion is granted. It is so ordered.. .....Lasker, J. m/n
Dec 18-74 Filed Protective Order between Pltff and deft Canadian Javelin Ltd.Lasker, J.m/n
Dec 31-74 Filed Stip. & Order that the time which within pltff. may make an motion for class action determination is extended to 1-15-75..Lasker, J.
Jan 16-75 Filed Stip & Order that the time within pltff may make a motion for a class action determination is extended to 12-31-75..,Lasker, J.
Jan 17-75 Filed Pltffs' Notice of Motion for Class Action Determination....ret. 1-22-75.. Rm 2903 at 10AM.
Jan 17-75 Filed Pltffs' Memo. of Law in support of a motion for order for Class Action determination.
Jan 21-75 Filed Deft. Canadian Javelin Ltd's Affdvt. consenting to prel. Determination of Class.

(continued on page #2)

CIVIL DOCKET

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN ENROLLMENT RETURNS
Jan 23-75	Filed Pltffs' Notice of Motion for an order to amend the Complt..ret. 2-3-75...			
Feb 10-75	Filed Memo-End on back of Mtion filed on 1-17-75..for Class Action Determination. .....Motion Granted on Consent. It is So Ordered...Lasker,J. m/n			
Feb 10-75	Filed Memo-End on back of Motion filed 1-23-75 for an order to amend complt. .....There being no Opposition, the motion is granted..It is so Ordered.Lasker,J m/n			
Mar 5-75	Filed Pltff's Notice to take deposition of deft. Canadian Javelin Ltd.			
Mar 5-75	Filed Pltff's Notice to take deposition of deft. Canadian Javelin by John Rozzini.			
Mar 5-75	Filed Pltff's Pltff's Interrogs. directed to all defts.			
4-3-75	**Filed Completion of Answers of Pltff. to deft's 1st set of interrogs and verification of prior answers.**			
4-10-75	**Filed Pltff's Notice of Motion for an order granting leave to amend pltff's reply.. .....ret. Rm 502 4-25-75..11am.**			
4-17-75	**Filed Pltffs' Notice to take deposition of deft. J.Cl Doyle.**			
4-22-75	**Filed Canadian Javelin's Answers to pltffs' interrogs. dated 2-20-75.**			
7-10-75	Filed Order that action is to be maintained as a class action under Rule 23. A hearing is to be held 10-17-75, in Room 618, at 9:30 A.M. to determine whether proposed Settlement Stip is fair, adequate, etc. Notice of the pendency of this action, , of class action determination, settlement hearing & right of class members to request exclusion, etc or other disposition of the action, & the requirement of class members to file a verified proof of claim, shall be given by Canadian Javelin in the form annexed as exhibit (B) within 60 days after date of entry of this order, by first class mail, as indicated. Any member of the class of Canadian Javelin may appear at the hearing to be heard & show cause why settlement should not be approved, etc, such objections to be made in writing & filed with the Clerk of the Court 20 days prior to hearing date, & mailed 3 days before such filing to pltffs attys, Wolf, Popper Ross Wolf & Jones, 845 Third Ave. N.Y., & other attys listed. Any members of the class who wish to be excluded may request such by filing a request not less than 10 days prior to date of hearing. If Settlement Stip is approved, action will be dismissed on the merits with prejudice & without costs & appropriate judgment, etc. as indicated. Jurisdiction to be retained by this Court, re settlement, & application by pltffs attys for allowances & disbursements.....LASKER,J m/n			

D.C. 110 (Exclusion cutt-off date=10-7-75---Claims Cut-off date=1-16-75)

LASKER, J

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT RECEIVED IN ENFORCEMENT RETURNS
7-11-75	Filed Stip & Order that answers of respective defts to the compls be deemed to constitute their answers to the amended complt as well, & all material pleaded in amended complt, not contained in the original complt, be deemed denied.....LASKER,J			
7-11-75	Filed Pltff's NOtice to take deposition of Deft. Canadian Javelin Ltd.			
7-11-75	Filed Deposition of Deft. Canadian Javelin Ltd take on 6-30-75. at 11Am			
7-11-75	Filed Deposition of Joch C. Doyle taken on 4-28-75...at 10Am.			
7-11-75	Filed Deposition of Deft. Canadian Javelin Ltd taken on 2-27-75 at 10AM.			
7-14-75	Filed Deposition of Canadian Javelin Ltd taken on on 3-28-75 at 3:10PM.			
7-14-75	Filed Pltff's Exhibits 1-25 to Deposition of Deft. Canadian Javelin Ltd.			
7-14-75	Filed Pltff Exhibits 26-34 to deposition of Deft. Canadian Javelin.			
7-14-75	Filed PltffExhibits 35 to Deposition of deft Canadian Javelim.			
7-14-75	Filed Pltff Exhibits 36 - 50 to deposition of deft. "			
7-14-75	Filed Pltff's " 51-66 " " " " " "			
7-14-75	Filed " " 67 " " " " " "			
7-14-75	Filed " " 67 A - 80 " " " " " "			
7-14-75	Filed " " 81 and 82 " " " " " "			
7-14-75	Filed " " A " " " " " "			
7-14-75	Filed " " B to C " " " " " "			
7-14-75	Filed " " 83-86 " " " " " "			
7-15-75	Filed Stip & Order that signature of Peter J. La Rush of his deposition of 6-20-75, is waived.....LASKER,J			
8-15-75	Filed Stip & Order re signature of John A. Rozzini of his deposition of 2-27-75, & that of John C. Doyle taken 4-28-75 are waived....LASKER			
8-25-75	Filed Affivt & Notice of Appearance By Samuel H. Sloan, as a member of the Class will appear before the Court on 10-17-75 to urge that the court disapprove of the proposed seettlement of the Class Action.			
8-26-75	Filed Samuel H. Sloan's Memo of Law in opposition of the proposed settlement.			
8-27-75	Filed Office Memo from Wolf Popper Ross Wolf & Jones Re: Pick-Up of Claims & Exclusions & Inquires as of this date.....8-27-75 at 3:30PM			
9-3-75	Filed Office Memo from Wolf Popper Ross Wolf & Jones Re: Pick up of Claims & Exclusions & Inquires as of this date....9-3-75.			
9-11-75	Filed Letter from Wolf Popper Ross Wolf & Jones by. Law Clerk Mr. J. Newhouse to Mr. Freeman, Deputy Clerk, Re: of the pick-up of Claims, exclusions & Inquires This date-9-11-75.			
9-24-75	Filed E. I Friedman, member to the class & Owner of Canadian Javelin Stock, NOITCE of Intention to APPEAR at hearing on 10-17-75 at 9:30 AM Rm 618.			

Continued on Page 35

Civil Docket Continuation

Date	PROCEEDINGS	Date Order Judgment
	...Proposed Settlement ....by D. J. Klein of Phila.	
	...Colomb authorizing pick up of Claims , Inquires	
	Filed Letter from Diamond & ...	
	...& exclusions as of 9-29-75...	
	Filed Notice of Intention to appear at settlement hearing, Statement of the Basis & objections to settled and and Memorandum of Authorities submitted on behalf of B. Lurie, H. Markell Lurie and Sylvia Einstein.	
	Filed Letter from Diamond & Colomb to W. J. Freeman Deuppy Clerk autorizing bearing to pick-up Claims, Exclusion etc as of this date.	
	Filed Letter to the Court autorizing the bearer on behalf of the office of Diamond & Colomb to pick up from time to time, the proofs etc recived by the Clerk's Office...Aaron M. Diamond.	
	Filed Pltffs' Affidvt by B. Wolf in support of the proposed settement.	
	Filed Letter From Diamond & Colomb authorizing the bearer to pick-up claims etc on this date.	
	Filed Pltffs' Suppl. Affdvt by B. Wolf, insupport of proposed settlement.	
	Filed Pltffs' Memo. in support of Proposed Settlement.	
	Filed Affdvt of Canadian Javelin , by P.J. DeSantis, Re: the mailing of notices & forms to the members of the class.	
	Filed Memo of Law by deft Canadian Javelin in support of proposed settlement.	
	Filed Letter from Diamond & Colomb authorizing the bearer to pick-up claims- exclusion etc...	
	Filed Pltffs' Additional Affdvt by B. Wolf .	
	Filed Deft. Canadian Javelin affdvt by George B. Nickum, III in Re: proposed settlement.	
	Filed Letter from Diamond & Colomb, by A. M. Diamond to Clerk's Office in Re: Pick-up of Claims Exclusion & Inquires .	
	(Not in Court) Affdvt of R. J. Murray for deft Can. Javelin Ltd. Re:Propose Judg.	
	Filed Affdvt of R. J. Murray for deft CJI...dtd. 10-7-75.	
	Filed letter from Diamond & Colomb dtd 10-29-75 to the Clerk's office authorizing bearer to pick-up claims exclusions. & inquiries. as of this date.	
	Filed Post Hearing Memo. on behalf of objectors Lurie, Lurie, and Einstein in Opposition to proposed Settlement.	
	Filed Affdvt of M. J. Senchack,Jr dtd 11-1-75.	
	Filed Affdvt of J. ... Mitchell dtd 11-1-75.	
	Filed Letter from Diamond & Colomb to the Clerk Re:Pick-Up of claims & exclustion & Inquires this date.	
	Filed Notice of Appearance by Feldshuh, Weinberger & Denfner Esqs for Claimants Sidney Z. Bowman & Minute Hair ~~entries~~.	
11-75	Filed Defts Lurie & Laurie's Motion for briefing schedule on the motion of deft. Canadian Javelin to strike objections of Laurie and Lurie...on 11-18-75.	
7-75	Filed Response of Objector 's Sally Einstein to motion of ~~Pltffs~~ deft to strike objections.	on
	Filed Affdvt of B. Einstein of her Notice of Intention to appear at Settlement Hearing.	
	Filed Pltffs' Affdvt by B. Wolf Re: status of objectors to the proposed settlement.	
	Filed Reply Memo of Law submitted on behalf of pltffs in support of the proposed settlement.	
	Filed Defts. Canadian Javelin Ltd's Notice of Motion for an Order striking the objections of the purported objectors Lurie and H. M. Lurie...on 11-18-75.	
	Filed Letter from Diamond & Colomb dtd 11-20-75 Re: pick-up of Claims & Exclusions ... Inquires from Clerk's Office this date.	
75	Filed transcript of record of proceedings, dated Oct 17, 1975	

DATE	PROCEEDINGS	Date Order Judgment
1-26-76	Filed Supplementary affidavit of Roger F. Murray.	
1-26-76	Filed Reply Memorandum of Canadian Javelin Ltd. in response to the Post Hearing Memorandum of the Luries & Einstein.	
2-01-76	Filed Motion of objecters for leave to file response to the affidavit of Benedict Wolf by Faye Lurie,H.Haskell Lurie & Sally Einstein& affidavit of Aram A. Hartunian.	
12-03-75	Filed letter from Diamond & Golomb dtd. 12-3-75. Re: pick-up of Claims & Exclusions & Inquiries from Clerk's Office this date..	
12-05-75	Filed Affidavit by Benedict Wolf in response to a motion by Robert Plotkin which seeks leave to file an affidavit of Aram A. Hartunian.	
12-09-75	Filed letter form Diamond & Golomb dtd. 12-09-75 Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.....	
12-05-75	Filed Notice of Appearance for Michael R. Shehadi, a member of the Class.	
12-09-75	Filed letter from Diamond Golomb dtd. 12-09-75. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.(2nd One).....	
12-15-75	Filed letter from Diamond & Golomb dtd. 12-15-75 . Re: pick up of Claims & Exclusions & Inquiries form Clerk's Office this date.	
12-19-75	Filed letter from Diamond & Golomb dtd. 12-19-75. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
12-29-75	Filed letter from Diamond & Golomb dtd. 12-29-75 . Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-8-76	Filed letter from Diamond & Golomb dtd. 1-8-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-12-76	Filed Pltffs. Notice of motionfor exclusion from the Class & Settlement out of time. XXXXXXXXX for an order permitting Burton Botvin,Carolyn Botvin Robert Botvin & James A. Botvin to be excluded from the Class & settlement. Ret. 1-19-76	
1-12-76	Filed Pltffs. Memorandum in support of motion requesting exclusion from class & settlement out of time.	
1-6-76	Filed letter from Diamond & Golomb dtd. 1-6-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-12-76	Filed letter from Diamond & Golomb dtd. 1-12-76. Re: pick up Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-13-76	Filed letter from Diamond & Golomb dtd. 1-13-76 Re: pick up Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-19-76	Filed Affidavit by Dft. Canadia Javelin in opposition to motion for exclusion from Class & from Settlement out of Time, by Irving L. Golomb.	
1-19-76	Filed Affidavit by Benedict Wolf in response to the motion of members of the Botvin family to beexecluded from the class action determination & proposed settlement.	
1-20-76	Filed letter from Diamond & Golomb dtd. 1-20-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-19-76	Filed letter from Diamond & Golomb dtd. 1-19-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-22-76	Filed letter from Diamond & Golomb dtd. 1-22-76.Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
1-23-76	Filed Further Affidavit of Richard A. Ash in support of motion of Botvins for Exclusion from the Class & Settlement Out of Time.	
1-28-76	Filed letter from Diamond & Golomb dtd. 1-25-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
2-3-76	Filed letter from Diamond & Golomb dtd. 2-3-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	
2-5-76	Filed letter from Diamond & Golomb dtd. 2-5-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.	

(Continued)

5117 Conine vs. Doyle

DATE	PROCEEDINGS
2-20-76	Filed letter from Diamond & Golomb dtd.2-20-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.
2-24-76	Filed letter from Diamond & Golomb dtd. 2-24-76. Re: pick up of Claims & Exclusions & Inquiries from Clerk's Office this date.
03-03-76	Filed claimant's (Wilfried Heinzel) request for hearing on rejection of claim.
03-05-76	Filed letter from Diamond & Golomb dtd. 3-5-76. Re: pickup of Claims & Exclusions & inquiries from Clerk's Office this date.
03-12-76	Filed letter from Diamond & Golomb dated 3-12-76. Re: pick up of claims & exclusions & inquiries from Clerk's Office this date.
04-01-76	Filed Claimant's (Solomon Mishkin) affidavit & notice of motion for an order extending Claimant's time to supply requested information and right to request a hearing, ret. 4-12-76.
04-02-76	Filed Deft's. (Canadian Javelin) affidavit in opposition to application of Burton Botvin, et al. to be excluded from the class.
04-05-76	Filed Objectors'. (Faye Lurie, H. Haskell Lurie & Sally Einstein) notice of change of address of attorneys.
04-08-76	Filed Objectors'. (Faye Lurie, et al) affidavit & notice of motion for an order directing the Pltffs. & Defts. to file a detailed report of the proofs of claim which have been filed, and for permission to examine all proofs of claim, requests for exclusion and correspondence, ret. 4-29-76.
04-12-76	Filed affidavit of Burton Botvin, et al. in support of motion for exclusion from the class and settlement out of time.
04-19-76	Filed Deft's. (Canadian Javelin) affidavit in opposition to motion of objectors (Einstein & Lurie).
04-19-76	Filed Pltffs'. affidavit in opposition to motion of objectors (Einstein & Lurie).
05-05-76	Filed Order that the record is complete in every respect and no further papers shall be filed or proffered to the Court for filing.....Lasker,J. (mailed notice)
[illegible]	[illegible]
07-21-76	Filed memo re: telephone conversation from Judge to Mr. Plotkin and from Mr. Plotkin to Judge in reference to delay signing Order. m/n
07-22-76	Filed memo endorsed on motion filed on motion of 12-1-75 -- motion granted so ordered LASKER J
07-22-76	Filed memo endorsed on motion filed on motion of 04-08-76 -motion denied so ordered LASKER J. m/n
07-22-76	Filed memo endorsed on motion of 11-13-75 - motion denied so ordered LASKER J. m/n
07-22-76	Filed memo endorsed on motion of 4-1-76 motion granted so ordered LASKER J m/n
07-29-76	Filed Affidavit & Motion of objectors Faye Lurie, H. Haskell Lurie and Sally Einstein, hereby move the Court to with draw and vacate its opinion dtd 6-30-75 and to disapprove the proposed settlement etc, as indicated.
~~08-4-76~~	~~Filed Affidavit of Service of~~Stephen B. Mosier on July 28,76
08-06-76	Filed Memo End on Objectors' motion to vacate opinion, etc., filed 7-29-76. Motion denied.....Goettel,J. (mailed notice)
08-06-76	Filed Consent Order & Final Judgment approving the Stip of Settlement in the sum of $1,350,000 and dismissing this action with prejudice.....Lasker,J. Judgment Entered 8-9-76.....Clerk. Entered 8-10-76.
08-24-76	Filed letter from Robert Plotkin addressed to Judge Lasker, dated 8-6-76.
08-17-76	Filed Consent Order substituting Garbarini Scher & DeCicco as ttorneys for Claimants Sidney Z. Bowman & Knute Haig.....Lasker,J.
[illegible]	[illegible]

-over-

D. C. 110 Criminal Continuation Sheet

GERTRUDE J. BONIME, et ano. -v- JOHN C. DOYLE, et al.

73 Civ. 5117 .. Page #8

DATE	PROCEEDINGS
09-07-76	Filed Claimant's (Guardian Management, S.A.) notice of appeal from the final judgment of 8-6-76. (mailed notice)
09-07-76	Filed Claimant's (Guardian Management, S.A.) undertaking for costs on appeal in the sum of $250.00 - Transamerica Insurance Company.
09-07-76	Filed Objectors' (Faye Lurie, E. Haskell Lurie & Sally Eirstein) notice of from the final judgment of 8-6-76. (mailed notice)
10- 4-76	Filed Slaon's notice of appeal from judgment of 8-10-76 to USCA.
10-5-76	Filed Sloan's notice of motion & affidavit for order extneding time to appeal.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____ Deputy Clerk

PLAINTIFF'S MOTION TO ADD A PARTY PLAINTIFF; MEMO ENDORSED, LASKER, DATED 12/11/74 (Pages A1-A2)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO. ENDORSED

GERTRUDE J. BONIME,

Plaintiff,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN LIMITED,

Defendants,

---

73 Civ. 5117
(MEL)

NOTICE OF MOTION TO ADD A PARTY PLAINTIFF

S I R S :

PLEASE TAKE NOTICE that upon the affidavit of Robert M. Kornreich, sworn to November 25, 1974, the complaint and the prior proceedings herein, the undersigned will move this Court (Lasker, J.), United States Court House, Foley Square, New York, New York, on December 6, 1974 for an order pursuant to Rules 15 and 21 of the Federal Rules of Civil Procedure directing that Lillian Olden, a purchaser of defendant Canadian Javelin Ltd. stock during the period alleged in the complaint be added as a party plaintiff herein and that the title of the action be amended accordingly.

Dated: New York, New York
November 25, 1974

Yours, etc.

WOLF POPPER ROSS WOLF & JONES

By Robert M. Kornreich
Attorneys for Plaintiff
Gertrude J. Bonime and
for Lillian Olden
845 Third Avenue
New York, New York 10022
(212) PL 9-4600

TO:

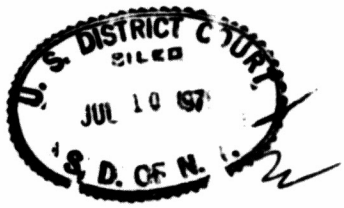
DIAMOND & GOLOMB, P. C.
99 Park Avenue
New York, New York 10016

STEPTOE & JOHNSON, ESQS.
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036

MOSES KRISLOV, ESQ.
800 Engineers Building
Cleveland, Ohio 44114

MARTIN OZER, ESQ.
475 Fifth Avenue
New York, New York 10017

ORDER DATED JULY 9, 1975 (WITH RESPECT TO HEARING ON PROPOSED SETTLEMENT AND CLASS ACTION CERTIFICATION) (Pages A3-A7)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER, and CANADIAN JAVELIN LIMITED,

Defendants.

----------x

73 Civ. 5117 (MEL)

ORDER

Plaintiffs having duly moved during the pendency of this action for an Order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining that this action may be maintained as a class action and the Court having granted such motion on February 7, 1975, and the parties having thereafter entered into a Stipulation of Settlement ("Settlement Stipulation") dated July 9, 1975, and plaintiffs having applied for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure, approving the settlement of the above-entitled action in accordance with the Settlement Stipulation.

NOW, upon the annexed affidavit of Robert M. Kornreich, sworn to July 9, 1975, the Settlement Stipulation dated July 9, 1975 (annexed as Exhibit "A" thereto) and the proposed Notice of Pendency of Action, of Class Action Determination and of a Settlement Hearing (annexed as Exhibit "B" thereto) and the affidavit of Yves Vincent sworn to July 2nd, 1975, (Exhibit "C" thereto), it is hereby

MICROFILM

ORDERED, that this action may be maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all persons who purchased common stock of Canadian Javelin Limited during the period commencing April 30, 1969 through October 25, 1973 inclusive (the "Class"), and it is further

ORDERED, that a hearing be held before me on October 17, 1975, at 9:30 AM, Room 618, United States Courthouse, Foley Square, New York, New York, for the purpose of determining whether the proposed Settlement Stipulation of the within action is fair, reasonable and adequate and should be approved by the Court, and said action dismissed on the merits with prejudice, and without costs, and it is further

ORDERED, that due and sufficient notice of the pendency of this action, of the class action determination, of the settlement hearing and of the right of the class members to request exclusion from the class and the settlement and not be bound by the settlement, judgment or other disposition of the action, and the requirement that class members must however file a verified proof of claim in order to participate in the settlement of the action, shall be given by Canadian Javelin Limited in the form annexed as Exhibit "B" referred to hereinabove, within ~~twenty~~ Sixty (~~20~~ 60) days after the date of entry of this Order, by (i) first-class mail addressed to: (a) all holders of record of common stock of Canadian Javelin Limited as shown on the stock transfer records of said company as of thirty (30) days prior to entry of the Order and (b) all identifiable members of the Class who are no longer stockholders of Canadian Javelin Limited (in the case of shares registered in street

names, Canadian Javelin Limited shall under this sub-paragraph (i) supply brokerage firms with sufficient copies to mail to all beneficial owners and Canadian Javelin Limited shall reimburse brokerage firms for postage expenses for mailing to eneficial owners) and (ii) by publication once in The New York Times, all national editions of the Wall Street Journal, and the Toronto Globe and Mail; and Canadian Javelin Limited shall, on or before the date of the hearing, file in this Court proof of the mailing of such Notice, and it is further

ORDERED, that any member of the Class of Canadian Javelin Limited stockholders who desires to do so may appear at the hearing herein and present any evidence that may be proper and relevant to the issues to be heard and show cause, if any he has, why the settlement should not be approved as fair, reasonable and adequate and why the action should not be dismissed on the merits with prejudice, and without costs, provided, however, that such objections must be made in writing and no such member of the Class shall be heard and no objections, papers or briefs submitted by any such persons shall be received and considered by the Court (unless the Court in its discretion shall otherwise direct) unless said papers, briefs and written objections are filed with the Clerk of the United States District Court for the Southern District of New York at least ~~thirty~~ twenty days prior to the hearing date fixed above, and mailed three days before such filing to Wolf Popper Ross Wolf & Jones, attorneys for plaintiffs, 845 Third Avenue, New York, New York; Diamond & Golomb, P.C. attorneys for Canadian Javelin Limited, 99 Park Avenue, New York, New York 10016, and Moses Krislov, Esq., attorney for John C. Doyle and William M. Wismer, 800 Engineers Building, Cleveland, Ohio 33114, and it is further

ORDERED, that except as the Court may otherwise direct, no member of the Class shall be entitled in any way to contest the approval of the terms and conditions of the aforesaid Settlement Stipulation or any judgment entered upon the settlement hearing unless written objections are mailed and filed in accordance with the preceding paragraph, failing which the said Class member shall be deemed to have waived and shall be foreclosed forever from raising such objections; and it is further

ORDERED, that any members of the Class who desires to be excluded from the Class may request exclusion by filing a request for exclusion not less than ten (10) days prior to the hearing date fixed above; and it is further

ORDERED, that if the said Settlement Stipulation is finally approved, the action will be dismissed on the merits with prejudice and without costs and appropriate judgment will be entered in accordance with the terms and provisions set forth in said Settlement Stipulation, and if a settlement in accordance with said Stipulation shall not be approved and consummated, such Settlement Stipulation and all proceedings had in connection therewith shall be without prejudice to the rights of any parties, except as otherwise specifically provided for in said Settlement Stipulation; and it is further

ORDERED, that jurisdiction is retained by this Court of this action and of all applications and proceedings relating to the settlement or its consummation and to the application by the attorneys for plaintiffs for the allowance

of reasonable counsel fees and disbursements incurred in connection with this action.

Dated: New York, N. Y.
July 9, 1975

Irving R. Cooper
U. S. D. J.

STIPULATION OF SETTLEMENT DATED JULY 9, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER, and CANADIAN JAVELIN LIMITED,

75 Civ. 5117 (MEL)

----------x

The undersigned hereby consent to the entry of the annexed Order in the above-entitled action.

Dated: New York, New York
July 9, 1975

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs

By: _____

DIAMOND & GOLOMB, P.C. and
STEPTOE & JOHNSON
Attorneys for Defendant Canadian Javelin Limited

By: _____

MOSES KRISLOV and MARTIN OZER
Attorneys for Defendants John C. Doyle and William M. Wismer

By: _____

AFFIDAVIT OF ROBERT M. KORNREICH DATED JULY 9, 1975 IN SUPPORT OF PROPOSED ORDER (Pages A9-A56)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERTRUDE J. BONIME and LILLIAM OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

----------x

73 Civ. 5117 (MEL)

AFFIDAVIT

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

ROBERT M. KORNREICH, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Wolf Popper Ross Wolf & Jones, attorneys for plaintiffs in this action. I am fully familiar with the matters contained in this affidavit.

2. This affidavit is submitted in support of the foregoing proposed Order which provides inter alia that

(a) a hearing be held to determine whether the annexed Stipulation of Settlement marked Exhibit "A" is fair, reasonable and adequate and should be approved by the Court, and

(b) a Notice be mailed and published in the form annexed hereto and marked Exhibit "B" pursuant to Rule 23 of the Federal Rules of Civil Procedure advising that a

class determination has been made, providing the information required by that Rule to be furnished to class members, and advising of the proposed class action settlement, the time and place of the settlement hearing, and other matters related thereto.

3. This action, which was commenced on December 3, 1973, was brought as a class action by plaintiff Gertrude J. Bonime and others similarly situated against defendant Canadian Javelin Limited ("Javelin") and its principal officers, defendants John C. Doyle and William M. Wismer. By decision and order of the Court dated December 11, 1974, Lillian Olden was added as a party plaintiff. The amended complaint alleges in substance that defendants engaged in a manipulative plan and scheme and course of conduct in violation of the federal securities laws and common law to inflate the price of Javelin's stock during the period commencing early 1969 and continuing through 1973. The amended complaint charges that during the relevant period Javelin and the other defendants failed to disclose all material facts and issued false and misleading financial statements, releases and reports concerning Javelin's project to manufacture linerboard in Newfoundland ("Linerboard Project"), and Javelin's mining activities in Panama and they otherwise improperly sold Javelin securities to the public. The action seeks to recover damages for plaintiffs and others similarly situated which they suffered as a result of their making purchases of Javelin's stock at inflated prices.

4. All of the defendants were served in the action and have denied all wrongdoing alleged in the amended complaint. On February 7, 1975, the Court granted plaintiffs' motion to

declare that the present action is maintainable as a class action on behalf of all persons who purchased Javelin stock (excluding defendants) during the period April 30, 1969 through October 25, 1973 inclusive. At plaintiffs' request, the Court temporarily delayed the sending of notice to the stockholders of the class determination until the remaining pretrial discovery had been completed. The notice requirements of Rule 23(c) of the Federal Rules of Civil Procedure are incorporated in the present proposed order.

5. Plaintiffs' attorneys have conducted an extensive study and investigation of the facts and the law relating to the matters set forth in the amended complaint. We have examined voluminous documents produced by Javelin, secured answers to extensive written interrogatories, and have taken the depositions of key witnesses who were familiar with the Linerboard Project and Panama activities.

6. After extensive negotiations, the parties have agreed to a settlement and compromise of this action on the basis set forth in the annexed Stipulation of Settlement. Under the essential terms, defendants shall create a settlement fund in the amount of $1,350,000 for distribution to purchasers of Javelin stock during the period April 30, 1969 and October 24, 1973 (the latter date being the last day of trading on the American Stock Exchange before a suspension began on October 25, 1973), the amount to be contributed by each defendant to be decided among themselves, provided however that the payment by the individual defendants shall be in cash, and the payment by Javelin, at its option to be made prior to the sending of the proposed Notice, shall be in the form of cash, stock or

warrants, or a combination of same. Counsel for all parties believe that the compromise and settlement is fair, reasonable and adequate and should be approved by the Court after hearing upon Notice to the members of the class.

7. The proposed Order provides that the Court set this matter down for a hearing to determine whether the annexed Stipulation of Settlement is fair, reasonable and adequate and should be approved by this Court. Prior to the hearing, plaintiffs' attorneys will submit to the Court a detailed affidavit and memorandum in support of the settlement.

8. The method provided in the proposed order of giving Notice is individual and published notice to be accomplished within sixty (60) days of the entry of the proposed order. As indicated in the affidavit of Yves Vincent, (Exhibit "C" hereto), it is the "best notice practicable" and is reasonably expected to afford actual notice to all members of the class. The Notice sets forth in substance the nature of the claims alleged herein, a summary of the proceedings, the terms of the settlement and the warrant to be issued, the rights of the class members to "opt out" or object to the settlement, the requirement of filing a proof of claim, the application by plaintiffs' attorneys for reasonable counsel fees and disbursements, and other pertinent information relating to the hearing to be held by the Court to determine whether the proposed settlement should be approved, including the pendency of two actions brought by

two stockholders of Javelin, one in the United States District Court for the Northern District of Illinois entitled Faye Lurie, et ano. v. Canadian Javelin Limited, et al., 73 C 3086 and in the Circuit Court of Cook County entitled Faye Lurie, et ano. v. Canadian Javelin Limited, 73 CH 7442. These cases were brought as class actions. The federal action has remained dormant except for the filing of pleadings. In the state court action, plaintiffs moved for a class action determination under Illinois Rules and for partial summary judgment and defendants cross-moved for complete summary judgment. Plaintiffs' class action motion has been pending since July 12, 1974 and the motion for partial summary judgment has been pending since December 24, 1974. In connection with the class action motion, the defendants informed the Chancery Court of this Court's class action decision.

9. It is respectfully requested that the proposed Order which has been consented to by all of the parties be entered by the Court.

Robert M. Kornreich
ROBERT M. KORNREICH

Sworn to before me this
9th day of July, 1975
Bertha Feldman
NOTARY PUBLIC

BERTHA FELDMAN
Notary Public, State of New York
No. 41-1134795
Qualified in Queens County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs, -against- JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN LIMITED, Defendants	73 Civ. 5117 (MEL) STIPULATION OF SETTLEMENT

WHEREAS, plaintiffs commenced an action in this Court on their own behalf and on behalf of all other persons similarly situated who purchased common stock of Canadian Javelin Limited during the period commencing April 30, 1969, and ending October 24, 1973, in which action plaintiffs alleged that defendants violated Section 5 of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") Rule 10b-5 promulgated thereunder, and the common law, in that, inter alia, defendants are alleged to have disseminated false and misleading statements concerning the Linerboard Project undertaken by Canadian Javelin Limited in Newfoundland, Canada and related matters, which statements are alleged to have artifically inflated the market price of Canadian Javelin Limited common stock during the period from April 30, 1969 through May 31, 1972; that defendants are alleged to have disseminated false and misleading statements concerning an amount claimed from the Government of the Province of Newfoundland and Labrador in connection with the purchase by that Government of the aforesaid Linerboard Project, and allegedly false and misleading statements concerning the Cerro Colorado Project in Panama and related

matters during the period from June 1, 1972 through October 24, 1973, which statements are alleged to have artifically inflated the market price of Canadian Javelin Limited Common stock during the aforesaid period; and

WHEREAS, defendants have served and filed answers to the amended complaint, which answers deny the material allegations thereof, deny liability and demand dismissal of the amended complaint; and

WHEREAS, defendants continue to deny any wrongdoing whatsoever and consider that this action is without merit, but that it is nevertheless desirable and in the best interest of all concerned, including plaintiffs and the persons on whose behalf the action was instituted, that this litigation be terminated without further legal proceedings, thus avoiding the expense of such proceedings and the expenditure of time thereon by the defendants, including the officers and directors of Canadian Javelin Limited, and

WHEREAS, the attorneys for the plaintiffs have conducted a detailed investigation of the facts and the law relating to the matters set forth in the pleadings herein; have conducted extensive pretrial discovery proceedings, including oral depositions, and the analyses of thousands of pages of documents and records produced by the defendants and public records bearing on the issues herein and have conducted extensive negotiations with the attorneys for the defendants; and

WHEREAS, upon the basis of said investigation, pre-trial discovery and negotiations, the attorneys for the plaintiffs have concluded that settlement of this litigation upon the terms

and conditions specified in this Stipulation of Settlement is desirable, reasonable, fair and adequate and in the best interests of plaintiffs and the other members of the class whom they represent.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, by and among the undersigned that this action and all individual and class claims which have been or might be asserted arising from or related to the matters alleged in the amended complaint shall be dismissed on the merits and with prejudice as to all parties, including all persons determined to be members of each plaintiff class herein who shall not have elected to be excluded from the class pursuant to Rule 23(c)(2), and shall be settled and compromised, subject to and conditioned upon the approval of the Court, in the manner and upon the terms and conditions set forth hereinafter:

1. As used herein, the following terms shall have the following meanings:

A. "Effective Date" means the date following the entry of a judgment approving this Stipulation as provided in paragraph 18 below when, by lapse of time or otherwise, such judgment shall no longer be subject to review or appeal.

B. "Class" means all persons who purchased Canadian Javelin Limited common stock during either the "First Class Period" or the "Second Class Period" and suffered loss thereby, and shall include the heirs, successors by operation of law and legal representatives of any such person; provided, however, that no person who was or is a director, officer or employee of Canadian Javelin Limited or any successor, assign, or member of the family of such person, or any trust of which such person or any successor, assign or member of the family of such person was or is a trustor, trustee, or beneficiary, during any part of either of such

periods shall be deemed to be a member of the class; and provided further that no person who had access to information not publicly available concerning the Linerboard Project referred to above, or the amount referred to above which was claimed by Canadian Javelin Limited from the Newfoundland Government, or the Cerro Colorado Project referred to above, shall be deemed to be a member of the class.

C. "First Period" means the period from April 30, 1969 through May 31, 1972, both dates inclusive.

D. "Second Period" means the period from June 1, 1972 through October 24, 1973, both dates inclusive.

E. "Entire Class Period" means the period from April 30, 1969 through October 24, 1973.

F. "Fund Distribution Date" shall be the 10th day (or if such day is not a business day, then the next succeeding business day) following the date when the validity of all proofs of claim shall have been determined (as provided in paragraphs 15-17 below), and no such determination shall any longer be subject to review or appeal.

G. "Person" includes, without limitation, any individual, corporation, partnership or other entity.

H. The date of purchase or sale of shares of Canadian Javelin common stock shall be the "Contract" or "Trade" date as distinguished from the "Settlement" date.

I. "Warrant" means one of the warrants which may be issued by Javelin pursuant to this Stipulation of Settlement, substantially in the form of Exhibit A hereto, which shall be in transferable form and entitle the holder thereof to purchase from Javelin at any time after the effective date hereof and prior to ten years from the effective date hereof, one half share of Javelin's authorized but unissued common stock (which in the opinion of counsel for Javelin is fully paid and non-assessable, freely transferrable and free and clear of all claims, liens and

encumbrances) at the market price of Javelin stock as hereinafter defined (see par. 1J).

J. "Market price of Javelin Stock" shall be the average of the closing prices of Javelin stock on the American Stock Exchange for 10 consecutive trading days commencing with 20 trading days before the date of the hearing referred to in paragraph 14C below.

2. Every purchaser of Canadian Javelin Limited common stock during either of the class periods, who suffered a loss as hereinafter determined, except any such purchaser who is a person specified in paragraph 1B above as excluded from the class, shall be entitled to share in the settlement fund established herein in the manner and to the extent provided below.

3. In full and final settlement and discharge of all claims arising out of or relating to the matters set forth in the amended complaint against any and all defendants, their predecessors, successors, assigns, officers and directors, and each of them, defendants shall pay the sum of $1,350,000 into a settlement fund ("Fund") as more fully set forth in paragraphs 4 and 5, below, in such proportions as they shall agree among themselves, to be distributed in accordance with this Stipulation and by Order of this Court.

4. The payment by defendant Canadian Javelin to the Fund shall be either in the form of Warrants or in the form of cash or in some combination of Warrants and cash, at the option of said defendant, such option to be exercised not later than the date on which notice is given pursuant to paragraph 14B below. In the event that any portion of the payment to the Fund shall be in the form of Warrants, Canadian Javelin will cause to be created Warrants

to purchase shares of Canadian Javelin Limited common stock. Javelin will take the necessary steps to list the Warrants on the American Stock Exchange and if such listing is refused, to list the Warrants on the Montreal Stock Exchange. Defendant Canadian Javelin will use its best efforts to effect registration under the Securities Act of 1933 and listing on the American Stock Exchange of a sufficient number of common shares to be reserved for issuance upon exercise of the aforesaid Warrants. In the event that the aforesaid shares are not registered on or before August 31, 1977, each Warrant-holder shall have the right to convert each Warrant into one-quarter share of common stock. Said Warrants shall be in the form set forth in Exhibit A hereto. The value of each Warrant shall be determined as of a date 10 days prior to the date of the hearing referred to in paragraph 14C below, by an expert to be designated by plaintiffs' counsel.

5. The payments to the Fund by the individual defendants shall be in the form of cash.

6. Any Canadian Javelin shares to be issued by Canadian Javelin in accordance with this Settlement Stipulation are to be issued by it from shares which are at present authorized but unissued and shall in the opinion of counsel for Canadian Javelin be validly issued fully paid and non-assessable, freely transferable and free and clear of all claims, liens and encumbrances.

7. The claim of each class member who has sustained a loss shall be determined in the following manner. With respect to all shares purchased during the First Period, the claim shall be the difference between the purchase price of the shares and the greater of (i) the selling price of the shares or (ii) the closing price of the stock on the American Stock Exchange on the first day of trading after May 31, 1972. With respect to all

shares purchased during the Second Period, the claim shall be the difference between the purchase price of the shares and the greater of (i) the selling price of the shares or (ii) the closing price of the stock on the first day trading was resumed on the American Stock Exchange after October 24, 1973. Any profit from a sale in the period from April 30, 1969, to and including the date of mailing of the notice of hearing hereinafter provided for, of Canadian Javelin common stock purchased during either the First or Second Class Periods, shall be deducted from losses in computing the claim of each class member.

8. If the total payable to all class members in the First Class Period whose proofs of claim are allowed exceeds one-third of the amount in the Fund, then the amount payable to each such class member in the First Class Period shall be reduced on a pro rata basis. If the total payable to all class members in the Second Class Period whose proofs of claim are allowed exceeds two-thirds of the amount in the Fund, then the amount payable to each such class member of the Second Class shall be reduced on a pro rata basis. If under the provisions of this Settlement Stipulation, a class member is entitled to receive a fraction of a Warrant to purchase Canadian Javelin common stock, cash shall be paid in lieu of any such fractional Warrant.

9. The Fund will be distributed under the Court's direction and supervision to members of the class whose proofs of claim are allowed. All expenses of administration in consummating the settlement and in notifying the class will be borne by Canadian Javelin. Plaintiffs' attorneys shall receive from the Fund such fee allowances and expenses as shall be awarded by the Court.

10. If, after distribution of the Fund in accordance with this Stipulation and the Order of this Court, there is any balance remaining in the Fund, such balance shall be returned to Canadian Javelin.

11. If the proposed settlement is approved by the Court, Wolf Popper Ross Wolf & Jones, attorneys for plaintiffs, will apply for an allowance of legal fees in the sum of $260,000.00 plus an amount for reimbursement of expenses. Such fees and expenses as may be awarded by the Court shall be paid from the Fund within ten days after the Effective Date.

12. The following rules shall be applied in determination of the members of the Class and dollar amount of claims in distribution of the Fund:

A. Any person who acquired shares of Canadian Javelin common stock by gift, bequest, devise or by way of intestate succession may participate in the Fund if his predecessor in interest would have been qualified to do so and shall assume the purchase price and the date of purchase of his predecessor in interest for purposes of determining his entitlement to recover hereunder.

B. The cost of purchase of each Class member shall be the net price paid for the stock, exclusive of brokerage costs and any other expenses of purchase. The sales price of any of the stock sold shall be the net sales price, exclusive of brokerage expenses and any other expenses of sale.

C. On the Fund Distribution Date, there shall be paid to each Class member whose claim has been allowed, an amount computed in accordance with paragraphs 7 and 8.

13. If this Settlement Stipulation is not approved, then the Settlement Stipulation and any negotiations, statements and proceedings in connection therewith shall not in any event be construed as or deemed to be evidence or any admission or concession on the part of the defendants, or any of them, named in this action of any liability or wrongdoing whatsoever, which is hereby expressly denied and disclaimed by each of the said defendants, and shall not be offered or received in evidence in any action or proceeding in any court or tribunal or used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature on the part of any of the said defendants.

14. As soon as practicable after this Settlement Stipulation has been executed, the attorneys for the plaintiffs shall move for approval of this Settlement Stipulation and for the entry of the judgment referred to in Paragraph 18 hereof. As part of said motion, application shall be made for an order, consented to by all of the parties hereto:

A. Directing that this action may be maintained as a class action and that notice be given to members of the Class pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, in such manner and form as shall be directed by the Court;

B. Directing that notice of the hearing referred to in (C) below be given not later than 60 days after issuance of the order to members of the Class and to all present stockholders of Canadian Javelin pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in such manner and form as shall be approved by the Court;

C. Directing that a hearing be held by the Court on such day and time as may be designated by the Court for the purposes of determining whether this Settlement Stipulation is fair, reasonable and adequate and should be approved and a judgment entered as provided in Paragraph 19 hereof;

D. Providing that any stockholder or member of the Class who objects to approval of this Stipulation or the judgment to be entered hereon may if said Class member does not exclude himself pursuant to sub-paragraph "F" below, appear at the hearing and show cause why the settlement proposed herein shall not be approved as fair, reasonable and adequate and why a judgment should not be entered hereon. Unless the Court otherwise directs, any stockholder or class member who wishes to appear at the hearing for the purpose of objecting to the settlement proposal herein shall submit a written objection to approval of the settlement, such written objection and any memorandum in support thereof shall be filed with the Court at least __ days prior to the hearing set by the order and copies thereof shall be mailed on or before filing with the Court to Wolf Popper Ross Wolf & Jones, 845 Third Avenue, New York, New York 10022, attorneys for the plaintiffs; Diamond & Golomb, 99 Park Avenue, New York, New York 10016, attorneys for Canadian Javelin; and Moses Krislov, 800 Engineers Building, Cleveland, Ohio 33114, attorneys for defendants John C. Doyle and William M. Wismer. Proof of service upon the aforesaid attorneys shall also be filed with this Court;

E. Providing that, unless the Court otherwise directs, no stockholder or member of the Class shall be entitled in any way to contest the approval of the terms and conditions of this Stipulation or the judgment to be entered herein except by serving and filing written objection in accordance with sub-paragraph "D" above and that any stockholder or member of the Class who fails to object in the manner prescribed shall be deemed to have waived and shall be foreclosed forever from raising such objections;

F. Requiring, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, that any member of the Class who desires to be excluded from the Class request exclusion in writing by filing a request for exclusion with the Court by a date designated in the order, which will not be later than 10 days before the hearing and any member of the Class who has so excluded himself shall not be entitled to participate in the Fund;

G. Requiring that any member of the Class desiring to participate in the Fund file with the Clerk of the Court or such person as the Court may designate a verified Proof of Claim in the form annexed hereto as Exhibit "B" no later than 90 days after the hearing referred to in paragraph 14C above;

H. Providing that the notice required under sub-paragraphs A and B hereof be given: (i) by mailing a copy of such notice within 60 days after the entry of the order requiring such notice to all stockholders of Canadian Javelin as shown by the stock records of Canadian Javelin at the address set forth on such records as of 30 days prior to the entry of the order (in the case of shares registered in street name, Canadian Javelin shall supply brokerage firms with sufficient copies to mail to all beneficial owners and

Canadian Javelin shall reimburse brokerage firms for postage expenses for mailings to beneficial owners), to all members of the class who are no longer stockholders of Canadian Javelin and whose names and addresses can be ascertained by reasonable diligence either through the records of Canadian Javelin or the records of the Canada Permanent Trust Company, the transfer agent for Canadian Javelin stock, at the address on such records, and (ii) by publication once in the New York Times, all national editions of the Wall Street Journal and the Toronto Globe & Mail.

J. Providing that the notice specified in subparagraph H hereof shall constitute due and sufficient notice of the hearing to all persons entitled to receive such notice, and requiring that proof of mailing and publication be filed at or prior to the hearing.

15. The following conditions shall apply to the filing of each Proof of Claim:

A. The Proof of Claim shall be executed under oath, in the form annexed hereto as Exhibit "B" and shall be accompanied by brokers' confirmations or monthly account statements relating to all purchases of Canadian Javelin common stock prior to and during the class period and sales of Canadian

Javelin common stock during and subsequent to the class periods if such confirmations or account statements are in the possession or under the control of the claimant;

B. By filing a proof of claim, each Class member will thereby submit himself to the jurisdiction of the Court. Each proof of claim shall be subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure and upon acceptance of said proof of claim and upon receipt by each Class member of his distributive share of the Fund each Class member thereby releases the defendants, their predecessors, successors, heirs, assigns, officers, directors, partners, and former partners, employees and attorneys and each of them of all claims and demands arising from or relating to the matters alleged in the amended complaint, or arising from or relating to the consummation of the terms of this Stipulation;

C. All proofs of claim will be subject to review by Wolf Popper Ross Wolf & Jones; Diamond & Golomb, P.C.; Steptoe & Johnson; and Moses Krislov. A proof of claim will be deemed accepted unless rejected by any of said attorneys no later than 20 days after the last day for the filing of proofs of claim;

D. If any proof of claim is rejected, in whole or in part, Notice of Rejection thereof shall be given to the person filing said proof of claim no later than 20 days after the last day for filing of proofs of claim, advising said claimant of the reason for such rejection and of the right to a hearing thereon. Within 30 days after the date of mailing of such Notice of Rejection, the Class member may file with the Court a written request for a hearing, and a copy of such request

shall be mailed to Wolf Popper Ross Wolf & Jones; Diamond & Golomb, P.C., and Moses Krislov, on or before the date it is filed with the Court. In the event that no such request for hearing is received within said 30 day period, the Class member shall be deemed to have consented to rejection of his proof of claim. Notice of all hearings upon any claim relating to participation in the Fund shall be given by the Court to counsel for all parties;

E. In the event that (i) a member of the Class prevails at the hearing with respect to his rejected proof of claim, in whole or in part, and the Court's decision is no longer subject to review or appeal, or (ii) such Class member prevails on appeal, the amount awarded to the Class member shall be paid to him.

16. The administration of the settlement and the decision of all controversies relating thereto, including disputed questions of law and fact relating to the validity of claims and the manner of proving claims, shall be under the authority of the Court and may, subject to the Court's discretion, be submitted in whole or in part to a Master

17. Any Class member who fails to make a timely filing of an adequate Proof of Claim shall be forever barred from participating in the distribution of the Fund, but shall in all other respects be subject to the provisions of this Stipulation. Each proof of claim shall be deemed to have been filed when posted, if mailed by registered or certified mail; postage prepaid, addressed in accordance with the instructions given therein. A proof of claim filed otherwise shall be deemed to be filed at the time it is actually received by the Clerk of the Court or such other person as may be designated by the Court to receive same.

18. Upon the approval by the Court of this Settlement Stipulation, including any amendments hereto, a judgment shall be entered in the appropriate form: (a) approving the Settlement Stipulation, and adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions and retaining jurisdiction to effectuate the same and to deal with the failure of any of the party signatories to comply with the terms, provisions and obligations flowing therefrom; (b) awarding fees and reimbursement of expenses to attorneys for plaintiffs (including fees of accountants or experts) or retaining jurisdiction for such purposes; (c) dismissing this action on the merits and with prejudice as against the plaintiffs, the Class, and all defendants, and without costs; (d) permanently barring and enjoining the institution or prosecution by any Class member either directly or representatively of any other action asserting claims which have been or might be asserted arising from or relating to the matters alleged in the amended complaint; (e) reserving jurisdiction over all matters relating to the administration and effectuation of the settlement and compromise provided for herein, including the distribution of the Fund and (f) containing such other and further provisions consistent with the terms and conditions of this Settlement Stipulation as the Court may deem advisable.

19. In the event that the Court does not approve this Settlement Stipulation and its failure to approve becomes final by reason of its affirmance on appeal or by lapse of time or otherwise, or in the event the Court approves the Settlement Stipulation but such judgment of approval is finally reversed on appeal, this Stipulation and the Order to be entered pursuant to paragraph 19 hereof shall be of no further force or effect

without further act by any party to this Settlement Stipulation, and no hearings or proceedings taken thereunder, including the decision thereon, and no fact referred to in such hearings or proceedings shall be considered or used as evidence or for any other purpose in this or any other proceeding.

20. This Stipulation may be executed in two or more counterparts.

Dated: New York, New York

July 9, 1975

WOLF POPPER ROSS WOLF & JONES
Attorneys for Plaintiffs

By _____

DIAMOND & GOLOMB, P.C.
and
STEPTOE & JOHNSON
Attorneys for Defendant Canadian Javelin Limited

By _____

MOSES KRISLOV
and
MARTIN OZER
Attorneys for Defendants John C. Doyle and William M. Wismer

By _____

EXHIBIT A

WARRANT

1. This is to certify that or assigns, is entitled to subscribe at the subscription price per share stated below ("Subscription Price") for ( ) shares of the Common Stock of Canadian Javelin Limited ("Javelin"), in whole or in part from time to time or at any time before the expiration hereof, subject to the conditions stated below.

2. The Subscription Price shall be:

3. If Javelin shall at any time split up or subdivide the outstanding shares of Common Stock, or issue additional shares of Common Stock as a dividend on stock of Javelin, the number of shares for which the holder hereof is entitled to subscribe immediately prior to such split up, or subdivision, or dividend shall be proportionately increased, and the Subscription Price then in effect shall be proportionately reduced. If Javelin shall at any time combine the outstanding shares of Common Stock into a smaller number of outstanding shares of Common Stock, the number of shares for which the holder hereof is entitled to subscribe immediately prior to such combination shall be proportionately decreased and the Subscription Price then in effect shall be proportionately increased. Any such adjustment shall become effective, in the case of any such split up, subdivision or combination, at the close of business on the effective date thereof, and in the case of any such stock dividend, at the close of business on the record date fixed for the determination of stockholders entitled thereto. Except as otherwise specifically

provided herein, no other adjustment of the number of shares for which the holder hereof is entitled to subscribe shall be made, including without limiting the generality of the foregoing, as a result of, or in connection with, the issuance or sale of shares of Common Stock, or the issuance or granting of options on, or the issuance or sale of Warrants for, or obligations or securities convertible into, shares of Common Stock.

Upon demand of the holder hereof and presentation of this Warrant to (the "Warrant Agent") for notation on the reverse of this Warrant of the issuance of a separate Warrant, Javelin will execute and deliver as promptly as practicable a separate Warrant evidencing rights to subscribe for additional shares of Common Stock which have vested in the holder hereof pursuant to the terms of this Section 3. Such additional Warrants shall be printed or lithographed and shall contain provisions identical to those set forth herein, except as to the number of shares and the price in Section 1 hereof. In lieu of demanding such a separate Warrant, the holder hereof, may at his option, present this Warrant to the Warrant Agent, for notation on the reverse of this Warrant of the number and price of additional shares which the holder hereof entitled to purchase under the provisions of this Section 3, and Javelin hereby agrees that such notation shall be made upon request.

Neither the issuance of a separate Warrant nor the making of any notation hereon shall be necessary to vest in the holder hereof rights to subscribe for additional shares of the Common Stock of Javelin as provided in this Section 3, or to reduce the number of shares for which such holder is entitled to subscribe, as provided in this section. Such rights which

vest in any such reduction shall be effective as provided in this Section 3, without any further act or deed on the part of Javelin or the holder hereof. No failure in whole or in part to demand either the issuance of a separate Warrant or the making of any notation hereon, shall be deemed a waiver of any such rights or any such reduction.

4. This Warrant may be exercised in whole or in part at any time from on and after the first business day after a registration statement shall have become effective under the Securities Act of 1933 covering the shares of Common Stock of Javelin which the warrant may be used to purchase to and including ten years from the date of the issuance of the Warrant, by presenting it to Javelin at the office of the Warrant Agent, together with (a) written notice signed by the holder hereof or his agent or attorney, that such holder wishes to subscribe for a specified number of shares, at a specified price or prices, which shares such holder is entitled to subscribe for hereunder at such price or prices, and (b) a check or checks payable to Javelin in an aggregate amount equal to the aggregate consideration payable to Javelin upon such subscription. As promptly as possible thereafter, Javelin shall execute and deliver certificates representing the aggregate number of shares of Common Stock so subscribed for in the names and denominations, if any, specified in such notice. To the extent that no names or denominations are specified, such certificates shall be registered in the name of the registered holder hereof, and in such denominations as Javelin may elect. If such certificates are to be registered in any name other than that of the registered holder of this Warrant, the notice shall be accompanied by funds sufficient to pay any transfer tax which shall be payable upon the issuance of the certificates. Javelin shall pay all expenses, taxes and

other charges payable in connection with the preparation, issuance and delivery of such certificates other than such transfer taxes.

If this Warrant shall be exercised in part only, Javelin shall upon the surrender of this Warrant for cancellation, execute and deliver a new Warrant evidencing the rights of the holder hereof to purchase the balance, not theretofore subscribed for, of the shares which such holder is entitled to subscribe for hereunder or, at the option of the holder hereof, the facts with respect to such exercise may be noted hereon and this Warrant returned to the holder hereof.

This Warrant shall be deemed to have been exercised and the person exercising the same to have become a Common Stock holder of record of the Corporation for the purpose of receiving dividends and for all other purposes whatsoever, as of the date when the Warrant is presented and surrendered to Javelin in accordance with the provisions herein, accompanied by the payments called for herein, and not at any time prior thereto.

5. Subject to the provisions hereof, this Warrant is transferable in the same manner and with the same effect as in the case of a negotiable instrument payable to a specified person. Upon surrender of this Warrant to Javelin at the office of the Warrant Agent together with a written assignment of this Warrant in form satisfactory to Javelin duly executed by the holder hereof, or his agent or attorney, and upon the deposit of funds sufficient to pay any transfer tax payable on the making of such transfer, Javelin shall execute and deliver a new Warrant in the name of the assignee named in such instrument of assignment and this Warrant shall promptly be cancelled. If and when this

Warrant is assigned in blank, Javelin may (but is not obligated to) deem and treat the bearer hereof as the holder and absolute owner of this Warrant for all purposes and Javelin shall not be affected by any notice to the contrary. A Warrant, if properly assigned, may be used by a new holder for subscription without having a new Warrant issued.

6. This Warrant may be divided or combined with other Warrants which carry the same rights upon presentation hereof to Javelin at the office of the Warrant Agent, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the holder hereof. Subject to compliance with the preceding paragraph, as to any transfer which may be involved in such division or combination, Javelin shall execute and deliver a new Warrant or Warrants in Exchange for the Warrant or Warrants to be divided or combined in accordance with such notice.

7. No fractional shares of Common Stock shall be issued upon the exercise of the Warrants, but in lieu thereof the Corporation shall issue scrip certificates representing one one-hundredth and multiples thereof of a right to receive one share and exchangeable, when surrendered, together with other scrip certificates of like tenor representing in the aggregate the right to receive one or more full shares, for certificates of one or more full shares of Common Stock. Such scrip certificates shall be issued in such form and shall be exchangeable on or before such date as the Board of Directors may determine, except that the bearers thereof shall not be entitled to vote, to receive dividends, or to exercise any rights whatsoever of a stockholder, until and only to the extent that such scrip certificates are exchanged for certificates of Common Stock.

BEST COPY AVAILABLE

8. Until the valid exercise of this Warrant, the holder hereof shall not be entitled to vote, to receive dividends, or to exercise any rights whatsoever of a stockholder.

9. In the event of any classification, reclassification or other reorganization, of the capital stock of Javelin, or in case of the consolidation or merger of Javelin with or into another corporation, or the conveyance to another corporation of all or substantially all of the assets of Javelin (but not including any spin off or split off of any assets of Javelin) then, as part of such classification, reclassification, consolidation, merger, or other distribution or conveyance, (but not including any such spin off or split off of any assets of Javelin, adequate provisions shall be made whereby the holder hereof upon the exercise of the rights to subscribe represented hereby shall be entitled to receive, on the same conditions, the stock, securities or other property which such holder would have been entitled to receive upon the occurrence of any of the above described events, if such holder had exercised the right to subscribe represented hereby immediately prior to the occurrence of any of such events; and any corporation which would become successor to Javelin by reason of such consolidation, merger or conveyance shall expressly assume the obligation to deliver, upon the exercise of the rights to subscribe represented hereby, such shares of stock, securities or other considerations as the holder hereof shall be entitled to receive pursuant to the provisions hereof.

10. In case:

(a) Javelin shall fix a record date, or close the transfer books for the determination of the holders of its

Common Stock for the purpose of entitling them to receive any distribution payable otherwise then in cash; or

(b) Javelin shall fix a record date, or close the transfer books for the determination of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase any shares of stock of any class or to receive any other rights; or

(c) Of any classification, reclassification, or other reorganization of the capital stock of Javelin, consolidation or merger of Javelin with or into another corporation or conveyance of all or substantially all of the assets of Javelin; or

(d) Of the voluntary or involuntary dissolution, liquidation or winding up of Javelin; then and in any such case Javelin shall mail to the registered holder hereof, at least seventy (70) days prior thereto, a notice stating the date or expected date on which a record date is to be fixed or the transfer books closed for the purpose of any of the events set forth in this Section 10, as the case may be; and such notice shall also be published by Javelin once in a newspaper printed in the English language and published in general circulation in the Borough of Manhattan, City of New York, such publication to be at least seventy (70) days prior to such date or expected date. Such notice shall also specify the date or expected date, if any is to be fixed, as of which holders of Common Stock of record shall be entitled to participate in said dividend, distribution or rights, or shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such classification, reclassification, reorganization, consolidation, merger, conveyance, dissolution, liquidation or winding up, as the case may be.

11. Javelin shall at all times have available a sufficient number of its duly authorized shares of Common Stock, sufficient for the exercise of the rights by the holders of Warrants, and at all times a number of shares of Common Stock sufficient for such purpose shall be deemed to be and hereby is reserved for such purpose.

Whenever it is required that any shares of Common Stock of Javelin, reserved for such purpose, be registered with or approved by any governmental authority under any state or federal law of the United States or any provincial or federal law of Canada before such shares may be issued upon the exercise of the right under the Warrants, Javelin shall use its best efforts to cause such shares to be duly registered or approved, as the case may be; specifically, no such shares may be issued, and the Warrant may not be exercised, prior to the first business day after a registration statement under the Securities Act of 1933 covering such shares shall have become effective.

If Javelin is unable to secure the registration of the shares of Common Stock reserved for such purpose by the close of business on August 31, 1977, then at any time thereafter during the life of this Warrant, the Warrant holder may convert this Warrant into one-quarter share of the Common Stock of Javelin by surrendering the Warrant at any time prior to the expiration date of the Warrant as set forth in paragraph 13, below.

As and when Javelin shall purchase or otherwise obtain Warrants, such Warrants shall be cancelled and shall not be reissued.

12. If the price of Javelin Common Stock shall equal or exceed $20 (U.S.) per share on each of 30 consecutive trading days, Javelin may, at its option, give written notice requiring

the Warrant holder to exercise the Warrant within 60 days from the date of such notice; provided that no such notice may be sent unless a registration statement is effective under the Securities Act of 1933 covering the shares which the warrant may be used to purchase.

13. Except as otherwise herein provided, this Warrant shall expire and become void at the close of business on the last business day of the tenth year after the issuance of the Warrant, unless the rights hereunder have been exercised on or before that date.

IN WITNESS WHEREOF, Javelin has caused its Warrant to be signed in its name by its President or Vice-President and its corporate seal to be impressed or imprinted hereon and attested by its Secretary or an Assistant Secretary.

CANADIAN JAVELIN LIMITED, INC.

By_____

ATTEST:

_____

Dated:

_____

TO: ALL PERSONS WHO PURCHASED COMMON STOCK OF CANADIAN JAVELIN LIMITED BETWEEN APRIL 30, 1969 AND OCTOBER 25, 1973, INCLUSIVE.

NOTICE OF A CLASS ACTION DETERMINATION, OF A PROPOSED CLASS ACTION SETTLEMENT AND HEARING THEREON, AND REQUIREMENTS FOR FILING PROOFS OF CLAIM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs, -against- JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED, Defendants.	73 Civ. 5117 (MEL) CLASS ACTION

THIS NOTICE IS GIVEN PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND AN ORDER OF THE ABOVE-NAMED COURT FILED JULY 9, 1975

1. THE NATURE OF THE ACTION

The above-entitled action was commenced on December 3, 1973, by plaintiff Bonime, and on December 11, 1974 plaintiff Olden was added as a party plaintiff. The action was prosecuted on behalf of plaintiffs and all other persons similarly situated who bought Canadian Javelin Limited ("Javelin") stock during the period from April 30, 1969 through October 25, 1973, inclusive.

The amended complaint ("Complaint") charges that defendant Javelin and its principal officers, defendants John C. Doyle and William M. Wismer, took certain actions in violation of the federal securities laws with the object of inflating the price of Canadian Javelin stock during the period commencing early in 1969 and continuing through October, 1973.

The Complaint charged that Javelin issued various releases and financial statements concerning Javelin's activities in connection with its project to manufacture linerboard in the Province of Newfoundland, Canada (the "Linerboard Project") and a project to exploit mineral resources in the Republic of Panama, which releases and financial statements allegedly contained untrue statements of fact and omitted material facts.

Specifically with regard to the Linerboard Project, the Complaint alleged that Javelin made statements that production would start in 1971 and that the mill would be the largest and most up-to-date in the world, but Javelin allegedly did not truly reveal the size, the anticipated profitability and commercial feasibility of the project, the production quality or quantity, the cost of the project as compared to cost projections, the financing needed for the project, the extent of the financial support from the Newfoundland government, certain serious disputes with that government concerning the project, and difficulties it was having in obtaining financing.

In or about May, 1972 the Newfoundland government agreed to purchase the Linerboard Project from Javelin. The Complaint went on to allege that Javelin reported in April, 1973 a current asset of $4.3 million dollars as due from that government, but failed to reveal that the government had not acknowledged this claim, nor had Javelin taken the necessary

steps to establish this claim.

The Complaint alleged further that the defendants gave the public, by press releases and reports, the false and misleading impression that Javelin had the right to exploit a large copper discovery in Panama, that it had made commercial feasibility studies concerning the copper project, that it had made financial arrangements to begin mining and production, and that it had a favorable arrangement to sell the entire initial output of this project. It is alleged that Javelin failed to disclose publicly that its right to exploit the ore was highly speculative, that neither a final commercial feasibility study nor financial arrangements for mining and production existed and that Javelin was still negotiating for the sale of all or part of the output of the project.

As a result of all these statements and omissions, according to the Complaint, the defendants artificially inflated Javelin's common stock during the 1969-1973 period, and the purchasers of Javelin stock in that period, if they had known the facts about Javelin, would not have bought the stock at the prices they paid which it is alleged was above the fair market value of the stock. The plaintiffs claimed that they and all others similarly situated were damaged because of the wrongful acts set forth in the Complaint which violated the securities laws and the common law, and they asked for judgment against the defendants, for themselves and all other persons similarly situated, in the amount of damages they sustained.

FURTHER PROCEEDINGS

The defendants appeared and filed their answers,

in which they denied all charges of wrongdoing which plaintiffs had made in the Complaint, and specifically denied that any releases or reports issued or filed by Javelin were false or misleading.

On February 10, 1975, the Court issued an order allowing this action to be maintained as a class action pursuant to the provisions of Rule 23(c)(1) of the Federal Rules of Civil Procedure, on behalf of all purchasers of Javelin's common stock during the period April 30, 1969 through October 25, 1973, other than the defendants.

Meanwhile, plaintiffs' attorneys had been conducting extensive pre-trial discovery proceedings, including the examination of numerous documents, securing answers to written interrogatories, and examining witnesses under oath.

On July 9, 1975 to avoid further litigation and expense, the defendants agreed to settle this case as a class action, subject to the approval of the Court and notice to the class. Plaintiffs, for their part, accepted and approved the proposed settlement, recognizing, inter alia, that the complexity of the issues, involving as they do, relations between Javelin and the Newfoundland Government and between Javelin and the Republic of Panama, would protract and add to the expense of further prosecution, and that the eventual outcome of trial and appeal of this strongly contested litigation is uncertain.

THE CLASS

The settlement agreement establishes as the class covered by it all persons who bought the common stock of Javelin during the period from April 30, 1969 through May 31, 1972 (First Class Period) or during the period from June

1, 1972 through October 24, 1973 (Second Class Period), and their heirs, successors by operation of law and their legal representatives, but excluding any person who was a director, officer or employee of Javelin at any time during the period from April 30, 1969 through October 24, 1973 and their successors or assigns and their family members or any trust in which they are trustee, trustee or beneficiary, or any person who had access to information not publicly available concerning the Linerboard Project, the amount which was claimed by Javelin from the Newfoundland government or the project to exploit mineral resources in Panama, as well as any person who requests exclusion from the class in accordance with the procedures of Rule 23 of the Federal Rules of Civil Procedure.

THE SETTLEMENT

The terms of the settlement are set forth in the Stipulation of Settlement dated July 9, 1975, between the plaintiffs and the defendants. The following is a brief summary of its terms.

The three defendants agree to pay into a settlement fund (the "Fund") the sum of $1,350,000.00. They will agree among themselves what portion of this sum each will pay. The payment of Javelin will be, at its option, announced prior to the issuance of this notice to the members of the class, either cash, stock or warrants or a combination of cash, stock and/or warrants.

The warrants are to be ten-year warrants each entitling the holder to purchase one-half share of Javelin stock at the market price (as defined in the Stipulation), this market price to be the average of the closing prices

of Javelin stock on the American Stock Exchange during a fixed period prior to the date of the settlement hearing referred to below. Javelin is to take the necessary steps to get the warrants listed on the American Stock Exchange or, in the event such listing is rejected, on the Montreal Stock Exchange, and to get the underlying stock registered. If the stock is not registered within a fixed period of time, each four warrants will be convertible into a share of Javelin common stock. The value of each warrant will be determined by an expert to be designated by plaintiffs' attorneys.

Every class member who has sustained a loss from the sale of Javelin stock purchased during the period from April 30, 1969 through October 24, 1973, in excess of profits made on the sale of Javelin stock purchased during the said period will be entitled to a proportionate share of the Fund on the filing of proper Proofs of Claim. One third of the Fund will be allocated to those who purchased stock in the First Class Period and two thirds to those who purchased in the Second Class Period.

HEARING ON APPROVAL OF THE SETTLEMENT

YOU ARE HEREBY NOTIFIED that a Hearing will be held on October 17th, 1975 at 9:30 AM, before Honorable Morris E. Lasker, Judge of the United States District Court for the Southern District of New York, in Room No. 618 United States Courthouse, Foley Square, New York, N.Y., pursuant to an Order of this Court dated July 9, 1975 to determine whether the proposed settlement of the above-entitled class action litigation should be approved by the Court as fair, reasonable

and adequate and whether said action should be dismissed on the merits and with prejudice as to the defendants.

If you are a member of the Class described above, your rights will be affected by these proceedings. At the Hearing any member of the Class may appear and show cause, if any he has, why the proposed settlement should not be approved as fair, reasonable and adequate and why this litigation should not be dismissed on the merits with prejudice, provided that no such person shall be heard and no papers or briefs shall be submitted to the Court, except by special permission of the Court, unless on or before ~~October 1~~ September 29, 1975, notice of intention to appear and a statement of the basis for objections, together with a memorandum of supportive authorities, are filed with the Court, and mailed first class no later than ~~October 1~~ September 26, 1975, to Wolf Popper Ross Wolf & Jones, Esqs., 845 Third Avenue, New York, New York 10022, attorneys for the plaintiffs; Diamond & Golomb, P.C., 99 Park Avenue, New York, New York 10016, attorneys for defendant Canadian Javelin Limited, and Moses Krislov, Esq., 800 Engineers Building, Cleveland, Ohio 44114, attorney for defendants John C. Doyle and William M. Wismer.

PARTICIPATION IN THE FUND AND REQUIREMENTS OF FILING A PROOF OF CLAIM

Javelin has exercised its option as to the form of its payment into the Fund, by agreeing that it will pay $ in warrants. The balance, $, will be paid by the defendants in cash.

In order to receive the proportionate share of the Fund to which you may be entitled, you are required to complete and file no later than January 16, 1976, a Proof of Claim on the form approved by the Court, set forth below,

together with broker's confirmations or monthly accounts relative to all purchases of Javelin common stock during the class periods and sales of such Javelin common stock, if such documents are in your possession or under your control. Any class member who does not timely file the Proof of Claim will not be permitted to share in the settlement.

Upon acceptance of your Proof of Claim and receipt of your distributive share of the Fund, you will thereby release the defendants, their predecessors, successors, heirs, assigns, officers, directors, partners, former partners, employees and attorneys of all claims and demands arising from or relating to the matters alleged in the amended complaint, or arising from or relating to the consummation of the terms of the Stipulation of Settlement. If you are a member of the Class and neither exclude yourself from the class in the manner provided below nor file a timely and proper Proof of Claim you will be forever barred from any recovery from the defendants with respect to the claims which are or which could have been asserted in this litigation.

The Stipulation of Settlement sets forth the method of review of Proofs of Claim, with final determination, in the event of rejection of a claim, to be made by the Court or by a Master appointed by the Court.

REQUEST FOR EXCLUSION

If you desire to be excluded from the class and the settlement, you must write to:

Clerk
United States District Court
U.S. Courthouse
Foley Square
New York, New York 10007

setting forth your name and address, the number of shares you purchased in the period from April 30, 1969 through October 24, 1973, the dates of such purchases and the prices paid, the number of shares you sold during said period, the dates of such sales and the prices received, and your request to be excluded. Your request for exclusion must be received on or before October 7th, 1975. Any Class member who elects to be excluded from the Class and the settlement remains free to pursue, at such Class member's own cost, whatever legal rights such Class member may have.

If you do not elect to be excluded, you may enter an appearance through your own counsel if you desire, and participate in the settlement through such counsel. If you do not request exclusion, and do not enter an appearance through your own counsel your interests in the litigation will be represented by the attorneys for the plaintiffs and the Class, Wolf Popper Ross Wolf & Jones.

ATTORNEYS' FEES, COSTS

If the settlement is approved, the attorneys for plaintiffs will apply for reimbursement of their out-of-pocket expenses and for $260,000 as fees. The Court will determine the amount of fees to be allowed. Payment of fees and expenses will be made from the Fund. All expenses of administration in consummating the settlement will be borne by Javelin.

OTHER LITIGATION

After this action was commenced, two stockholders started an action in the Federal District Court in Chicago (Faye Lurie, et al. v. Canadian Javelin Limited, et al., 73 C 3086) based generally on the same issues as are involved in this action, which case has remained dormant, and another

action in the Circuit Court of Cook County, Illinois (Faye Lurie, et ano. v. Canadian Javelin Limited, et al., 73 CH 7442) also based generally on the same issues as are involved in this case. In the latter action plaintiffs moved for a class action determination under Illinois Rules and for partial summary judgment and defendants cross-moved for complete summary judgment. The class action motion has been pending since July 12, 1974 and plaintiffs' partial summary judgment motion has been pending since December 24, 1974, both without determination.

EXAMINATION OF PAPERS

The foregoing references to the pleadings, the settlement agreement and other documents are only summaries thereof. For a complete and detailed description of all the terms, conditions and provisions of the settlement agreement, the form of the warrant to be issued, the pleadings and other pertinent papers, reference is made to the underlying documents, the complete texts of which are on file with the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York under the file number set forth above, where they are available for inspection and copying during regular Court business days.

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Dated: New York, N.Y.
July 9, 1975

Morris E. Lasker

MORRIS E. LASKER
Judge

VERIFIED PROOF OF CLAIM AND RELEASE

Pursuant to court order, in order to receive any payments in the below litigation, you must file this Proof of Claim on or before , 1975. If you fail to file by that date, your claim will be subject to rejection and you may be precluded from receiving any money in the settlement of this class action.

Mail your claim promptly to:

Clerk of the United States District
Court, Southern District of New York
(Re: Bonime v. Doyle, et al., 73 Civ.
5117 (MEL)
United States Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAM OLDEN, Plaintiffs,	73 Civ. 5117 (MEL)
-against-	CLASS ACTION
JOHN C. DOYLE, WILLIAM M. WISMER, and CANADIAN JAVELIN LIMITED, Defendants.	

_____ being duly sworn, deposes
(Insert Name)

and says:

I. IDENTITY OF CLAIMANT: (Fill in appropriate space in only one of the following paragraphs, either A,B,C,D, or E).

A. INDIVIDUAL OR JOINT OWNERSHIP:

My(our) name(s) is (are)_____

_____

and my (our) address is_____

_____

B. CORPORATION:

I am the_____(Title) of_____

_____.

NAME OF CORPORATION

I am authorized to make this claim on behalf of the corporation.

C. PARTNERSHIP:

I am a member of_____

a co-partnership; our business address is_____

_____.

I am authorized to make this claim on behalf of the partnership.

D. EXECUTORS OR ADMINISTRATORS:

I am (we are)_____

_____

the executor(s) administrator(s) of the Estate of_____

_____, deceased, and my (our) mailing address is_____.

E. OTHERS:

(Give full particulars: name, address, on whose behalf you are acting, capacity, etc.).

_____

_____

_____

II. PURCHASES OF CANADIAN JAVELIN LIMITED COMMON STOCK BETWEEN APRIL 30, 1969 AND OCTOBER [illegible], 1975, INCLUSIVE

A. With Respect To Each Purchase, State In Chronological Order In the Schedule Below:

1. Date(s) of Purchase	2. No. of Shs. Purchased	3. Purchase Price Per Share	4. Tot. price pd. excluding commission	5. If sold, date(s) of sale	6. No. of Shares Sold	7. Selling Price per Share	8. Net Sale Price excluding commission	9. Profit or Loss (dif. bet. Column 4&8
COMMON STOCK								

I am enclosing to the extent available the original or facsimile of the broker's confirmations, monthly accounts or other documents evidencing my status and in support of my claim. (If any such documents are not in your possession, please indicate below the name and address where such documents can be obtained).

III. SUBMISSION TO JURISDICTION OF COURT AND RELEASE OF DEFENDANTS

Claimant submits this Proof of Claim under the terms of the Stipulation of Settlement dated July 9, 1975, and claimant submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to his claim and agrees to be bound by and subject to the terms of any judgment that shall be entered upon the Stipulation of Settlement. Claimant understands that the information contained in this Proof of Claim may be subject to further investigation and discovery under the Federal Rules of Civil Procedure and claimant agrees to furnish additional information to support this claim if required to do so.

In consideration of participating in the settlement claimant does by these presents for himself, his heirs, executors, administrators, successors and assigns, remise, release and forever discharge defendant Canadian Javelin Limited and its past and present officers, directors, employees, agents, attorneys, subsidiaries and affiliates and defendants John C. Doyle and William M. Wismer, and their heirs, representatives, agents, attorneys and successors, from all

claims which have been asserted in the action, and all claims and causes of action which might have been asserted in connection with, or which arise out of, any of the matters alleged in the action, whether known or unknown.

Signed by_____

STATE OF)
):ss.
COUNTY OF)

On this day of , 1975, before me personally appeared_____ known to me to be the person who executed the within instrument and subscribed to and sworn to the truth of said instrument before me and acknowledged to me that executed the same.

_____
NOTARY PUBLIC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME, Plaintiffs, v. JOHN C. DOYLE, WILLIAM M. WISMER CANADIAN JAVELIN LIMITED, Defendants.	)	Civil Action No. 73-5117

AFFIDAVIT OF YVES VINCENT

CITY OF MONTREAL)
PROVINCE OF QUEBEC) ss:

COMES NOW YVES VINCENT, being first duly sworn, deposes and says:

1. I am an Executive of Canadian Javelin Limited ("CJV"). Among my duties I exercise general oversight of CJV's shareholder records and I am personally familiar with the shareholder records in the possession of CJV and its transfer agents. I believe I am the person best qualified to describe the processes to be employed and the time required to send notices to the class of purchasers of Canadian Javelin stock during the period from April 30, 1969 to October 24, 1973 pursuant to order of the Court.

2. I am informed that CJV must provide the best notice practicable under the circumstances to the class of purchasers, including individual notice to all members of the class who can be identified with reasonable effort. I understand that the required notice will include one or more printed pages containing a notice of hearing and any other necessary material to be enclosed in an envelope on which the name and address of the individual purchaser is printed. I also understand that the notice must be sent by first class mail to the purchaser's latest known address with a request to the postal authorities to make any address change. In the case of those purchasers whose shares were held in the name of a stockbroker, CJV must request the stockbroker to forward notice to each beneficial owner of CJV shares and reimburse the

stockbroker for the expense. CJV must also provide additional copies of the notice to the stockbroker upon request.

3. CJV and its transfer agent have in their possession files that contain the names of current and past shareholders, together with the dates on which each shareholder purchased CJV stock and the most recent address provided by the shareholder to CJV. In these files, the names and addresses of current and past CJV shareholders are typed or written in ink on file cards. These files are not maintained on or linked to any automated data processing equipment. These files provide the most complete, accurate and up-to-date information available concerning the names and addresses of CJV shareholders.

4. Based on a review of the files, I estimate that it will be necessary to send notice to approximately 30,000 persons who purchased shares of CJV stock during the relevant period. In order to do so, I will make arrangements to hire an outside contractor to provide a team of from ten to twenty experienced typists who will address the envelopes. CJV will employ its own personnel in searching the shareholder files, inserting the materials in the envelopes and mailing the notices.

5. The files referred to contain approximately forty boxes of past and current shareholder cards. In order to segregate the cards that contain information pertaining to purchasers of CJV stock between April 30, 1969 and October 24, 1973, each box of files must be searched manually and the relevant cards removed.

6. It will also be necessary to retype the names and addresses from the file cards onto the envelopes in which notice will be mailed to members of the class.

7. I believe that a reasonable time in which to accomplish all of the necessary work of manually searching the files, addressing the envelopes, inserting the notice material and mailing the notices is sixty days from the date CJV is notified to begin the process.

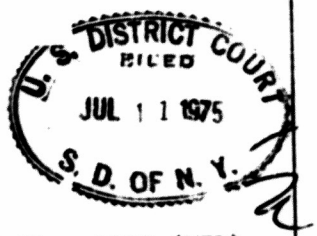
6. The above method is calculated to provide actual notice to each member of the class. However, I understand that the stipulation to be filed with the Court will also provide for publication notice. If any member of the class is inadvertently omitted or fails to receive actual notice for any reason, I believe that the combination of individual and publication notices as proposed provides a high degree of assurance of reaching all members of the class, and is the best practicable notice under the circumstances.

Yves Vincent

Sworn to before me this
2nd day of July, 1975
in the City and District
of Montreal, Province of Quebec

RAYMOND BALESTRERI, Commissioner,
Judicial District of Montreal
#14287

STIPULATION THAT DEFENDANTS' ANSWERS TO COMPLAINT SHALL CONSTITUTE THEIR ANSWERS TO THE AMENDED COMPLAINT. SO ORDERED.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN LIMITED,

Defendants.

----------X

73 Civ. 5117 (MEL)

STIPULATION

IT IS HEREBY STIPULATED AND AGREED that the answers of the respective defendants to the complaint herein be deemed to constitute their answers to the amended complaint, as well, and that all material pleaded in the amended complaint, not contained in the original complaint, be deemed denied.

Dated: May 15, 1975.

Wolf Popper per Ron Wolf & Jones
by Robert M. Kaufman
Attorneys for Plaintiffs

Attorneys for Defendant Canadian Javelin Limited

Attorneys for Defendants Doyle and Wismer

SO ORDERED JULY 10, 1975

J. S. D. J.

MICROFILM
JUL 14 1975

AFFIDAVIT, NOTICE OF APPEARANCE AND MEMO OF LAW IN OPPOSITION TO THE PROPOSED SETTLEMENT BY SAMUEL H. SLOAN (Pages A58-A71)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

U.S. DISTRICT COURT
FILED
AUG 26 1975
S. D. OF N. Y.

NOTICE OF APPEARANCE

73 Civil 5117
MEL

PLEASE TAKE NOTICE that the undersigned is a member of the class of plaintiffs who purchased the stock of Canadian Javelin Ltd. during the Second Class Period and the undersigned intends to appear at a hearing before the Honorable Morris E. Lasker, Judge of the United States District Court for the Southern District of New York, on October 17, 1975 and to urge that the court dissapprove of the proposed settlement of the above entitled class action litigation, that the court determine pursuant to Rule 23 F.R. Civ. P. that a class action cannot be maintained, and that the court dismiss the complaint of plaintiff with prejudice.

PLEASE TAKE FURTHER NOTICE that the undersigned demands that all papers and briefs filed in this action be served upon him at his address at 917 Old Trents Ferry Road, Lynchburg, Virginia 24503.

Yours, etc.

Samuel H. Sloan

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503
(804) 384-1207

To: Wolf Popper Ross Wolf & Jones Esqs.
845 Third Avenue
New York, New York 10022

Diamond & Golomb
99 Park Avenue
New York, New York 10016

Moses Krislov
800 Engineers Bldg.
Cleveland, Ohio 33114

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME AND LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

73 Civil 5117
MEL

AFFIDAVIT

CITY OF LYNCHBURG
COMMONWEALTH OF VIRGINIA]

Samuel H. Sloan being duly sworn, deposes and says:

I am the registered stockholder of 13 shares of Canadian Javelin Ltd. ("CJV") which I purchased during the second class period. Furthermore, in 1973, during the second class period, I made purchases and sales of CJV shares which resulted in total liquidated damages in the amount of approximately $170,000.

Nevertheless, I am unable to make an informed decision as to whether I should file a proof of claim or instead exclude myself from the class. One reason for this is that it appears that if I file a proof of claim and if the proposed class action settlement is allowed that I will, in all probability, receive a funny new warrant which is likely to have little if any value. This is particularly true in view of the fact CJV is presently suspended from trading by the S.E.C. and, at present, it would be illegal for a resident of the United States to exercize these

funny new warrants. Accordingly, I refuse to waive any rights I might have in this litigation and instead ask that the court d disapprove the proposed settlement.

I also ask that this court disallow any claim for counsel fees. I am informed and believe that for at least the past fifteen years the law firm of Wolf Popper Ross Wolf & Jones has engaged in the practices of barratry, champerty and maintainance and it appears that they may have done so in this lawsuit. In fact, from the proposed settlement it is obvious that this law firm has incurred out-of-pocket expenses for which it has not been re-imbursed by its client. Accordingly, this law firm has violated the Canons of Ethics and is not entitled to any attorney's fees.

Samuel H. Sloan

Sworn to before me this
20th day of August, 1975

NOTARY PUBLIC

My commission expires Dec 14, 1975

City of Lynchburg)
) ss:s
Commonwealth of Virginia)

Palina V. Kristjansdottir being duly sworn, deposes and says that she is not a party to this action, is over 21 years of age and resides at 917 Old Trents Ferry Road in Lynchburg, Virginia 24503 and that on August 20, 1975 she served the within notice of appearance by mailing a true copy of the same to:

Wolf Popper Ross Wolf & Jones Esqs.
845 Third Avenue
New York, New York 10022

Diamond & Golomb
99 Park Avenue
New York, New York 10016

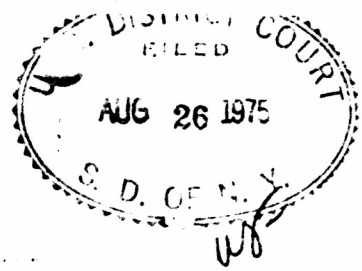
Moses Krislov
800 Engineers Bldg.
Cleveland, Ohio 33114

Palina V. Kristjansdottir

Sworn to before me this
20th day of August, 1975

NOTARY PUBLIC

My commission expires Nov. 14, 1977



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

73 Civil 5117
MEL

MEMORANDUM OF LAW

PRELIMINARY STATEMENT

Samuel H. Sloan ("Sloan") is the record owner of 13 shares of Canadian Javelin Ltd ("CJV") which he purchased during the second class period. Sloan also made numerous purchases and sales of CJV during the second class period and at one time during the second class period had a short position of as much as 33400 shares of CJV. As a result of this trading Sloan sustained losses of approximately $170,000.

There are presently three cases before the United States Court of Appeals for the Second Circuit arising from this circumstance. In Sloan v CJV et al, U.S.C.A. docket no. 75-7096, (CCH Fed Sec Law Rep ¶ 94, 579 [1973-74 transfer binder]) Sloan seeks money damages resulting from trading in CJV shares. In S.E.C. v CJV, Sloan is appealing from the denial by the Hon. Lloyd F. MacMahon of Sloan's motion to intervene. U.S.C.A. docket no. 75-7046 (CCH Fed Sec Law Rep. ¶ 94, 861 [1974 transfer binder]). In Sloan v S.E.C. U.S.C.A.

docket no. 74-2457, Sloan seeks an order vacating the order of the S.E.C. suspending trading in CJV. All three appeals are on the appeallate calendar and are awaiting oral argument and disposition.

POINT I

COUNSEL FOR THE PLAINTIFF IS NOT ENTITLED TO RECEIVE REIMBERSEMENT OF OUT-OF-POCKET EXPENSES AND $260,000 IN LEGAL FEES

There is no statutory provision authorizing the payment of legal fees in litigation of this sort. In fact, the lawsuit itself is not authorized by statute but rather by a rule, S.E.C. Rule 10b-5. The S.E.C. has promulgated no rule which provides for the payment of legal fees.

Lawsuits of this sort are based on a "private attorney general" theory. Most attorneys who bring this kind of litigation solicite clients by obtaining a shareholder list from the company and calling prospective clients until they find one who is willing to act as a plaintiff. Typically the plaintiff is the holder of only one or two shares of stock of the target company.

Conduct of this sort is a direct violation of the Canons of Professional Ethics of the American Bar Association. NAACP v. Button 371 U.S. 415, 438, 439, 451 (1963); cf. Brotherhood of Railroad Trainmen v Virginia State Bar 377 U.S. 1 (1964); United Mine Workers v Illinois Bar Association 389 U.S. 217

(1967). Barratry is not only a violation of the Canons of Ethics but it is a common law tort and is illegal in most states.

The law firm which represents the plaintiff is one of those which have habitually engaged in the practice of barratry. Whether it has done so in this case is of no moment because it is not entitled to receive legal fees in any event. The practice of barratry in the bringing of these lawsuits has been tolerated by the courts on the "private attorney general" theory. In other words, the wrong which is done by the practice of stirring up litigation is more than offset by the benefit to the "public" from the maintainance of these lawsuits. However, in Alyeska Pipeline Service v Wilderness Soc ____U.S.____, 44 L. Ed 2d 141 (1975) Supreme Court ruled that lawsuits brought under a private attorney general theory cannot result in the payment of legal fees in the absence of a statutory authorization.

It is true that the dictum of the court was that where the plaintiff recovered a special fund for the benefit of others as well as himself, the court might permit the plaintiff to recover his costs including his attorneys fees. Id, 44 L. Ed 2d at 153. Thus if Ms. Bonime can produce a bill showing that the law firm of Wolf Popper Ross Wolf & Jones, Esq. has billed her in the amount of $260,000 for services rendered and if Ms. Bonime can

produce a cancelled check showing that she, in fact, has paid this amount, this Court, in its equitable discretion, could possibly decide to reimberse to Ms. Bonime for some and perhaps even for all of her legal expenses. However, it is unlikely that the law firm of Wolf Popper Ross Wolf & Jones has charged Ms. Bonime either a legal fee or out-of-pocket expenses. In fact, it is far more likely that Ms. Bonime is being paid to be a plaintiff. Accordingly, the claim by Wolf Popper Ross Wolf & Jones for all or any part of a legal fee of $260,000 and for any out-of-pocket expenses should be dissallowed.

This result would not be unjust. The law firm of Wolf Popper Ross Wolf & Jones has for years engaged in the practices of barratry, maintainance and champerty and has garnered millions of dollars in legal fees as a result. The loss of legal fees and out-of-pocket expenses in this case would not result in an unjust punishment. In any event, see Hughes Tool Co. v Trans World Airlines Inc. 409 U.S. 363, 391 (1973) where the Supreme Court extinquished a claim for $7,500,000 in attorney's fees.

POINT II

THE PROPOSED CLASS ACTION SETTLEMENT MUST BE REJECTED AS NOT BEING SUFFICIENTLY DEFINATE

In the proposed class action settlement the plaintiffs are presented with Hobson's Choice. Either they must take what is offered or else they don't get anything. If CJV chooses to pay cash, which is unlikely, all persons who

sue CJV in the future, such as Sloan for example,[1] will have less hope of recovery even should such a lawsuit be successful because CJV will have less available recources with which to satisfy a judgment. If, on the other hand, CJV settles this lawsuit by issuing a new funny warrant, as described in the notice of settlement, the plaintiffs will wind up with a security of questionable value particularly in view of the fact that CJV is presently suspended from trading by the S.E.C.

Moreover, the proposed settlement fails to state whether cash or warrants would be forthcoming and, if so, how much or in what proportion to trading losses. Thus the plaintiffs are being placed in a position where they are forced to decide whether to take something while having no idea what, if anything, they will be getting if they accept this offer. Clearly, the proposed settlement is unfair and must be rejected.

This has all happened before. In 1958 and 1959 a total of 17 derivative action suits were brought against Doyle and CJV. The firm of Diamond & Golomb represented CJV

---

1. In Sloan v CJV et al, supra the complaint was dismissed by Judge Bonsal without prejudice to the filing of a new complaint by Sloan naming as defendants CJV, Doyle, and Wismer. Thus Sloan is free to sue these defendants at any time.

in this litigation. There were several reported decisions: Armstrong v Doyle 193 N.Y.S. 2d 421; Gittleman v Doyle 194 N.Y.S. 401; Weiss v Doyle 178 F. Supp. 566; Charles O. Finley v Doyle 178 F. Supp. 863. Ultimately, all of these lawsuits were consolidated into a New York State court action: Armstrong v Doyle, supra. This action was settled in 1963. Under the terms of the settlement, John C. Doyle agreed to a pay Three Million Dollars ($3,000,000) to Canadian Javelin Ltd. and signed a promissory note to that effect and Canadian Javelin Ltd. was ordered to pay Nine Hundred Fifty-seven Thousand Dollars ($957,000) in legal fees. However, Doyle never paid the Three Million Dollars ($3,000,000) promissory note and Canadian Javelin Ltd. still owes Three Hundred Sixty-seven Thousand Five Hundred Dollars ($367,500) in attorney's fees resulting from that litigation. Thus, what started out as a lawsuit derivatively in behalf of CJV resulted instead in the wasting of the assets of CJV. In that case Wolf, Popper, Ross, Wolf & Jones participated in the wasting of the assets of CJV because it was one of 15 law firms which represented the plaintiff's in that litigation. There, Wolf Popper Ross Wolf & Jones was awarded a legal fee by the court in the amount of $15,000.00. In view of this past history it appears reasonable to speculate that Wolf Popper Ross Wolf & Jones expects to be paid in cash while leaving the warrants to the injured plaintiffs.

POINT III

THIS ACTION CANNOT BE MAINTAINED AS A CLASS ACTION.

CJV is not a bankrupt company and its shares could possibly in the future have considerable value. Indeed the most recent annual report of CJV stated that CJV was about to receive immenently from the Government of Panama a large sum of money estimated to be $23,220,445. This sum of money was carried on CJV's balance sheet as a non-current asset.

If CJV does in fact receive this sum of money, it is entirely possible that CJV will at some time in the future trade at a price higher than $18, which is the highest price at which it traded during the first and second class periods. If this occurs, then all persons who have unliquidated damages, i.e. who never sold their shares of CJV, will not have suffered any injury at all. Furthermore, those persons who never sold their shares of CJV have no basis for a lawsuit. The false and misleading statements of the defendants had no proximate cause to their injury. These plaintiff's were injured not because CJV made false and misleading statements but rather because the S.E.C. suspended trading. Therefore, the proper remedy for these defendants, if they have a remedy, is to sue the S.E.C., not to sue CJV.

Clearly, then, there must be at least two classes of plaintiffs: those who have suffered liquidated damages and those who have suffered unliquidated damages. Since there are already two classes of plaintiffs that means that there must be at least four

classes of plaintiffs.

There are many other objections to the present posture of this class action. For one thing, Ms. Bonime very likely has little if anything in common with Mr. Sloan.

For this reason, the court should determine that a class action is not maintainable under Rule 23 F.R. Civ. P.

CONCLUSION

For all of the reasons set forth above the proposed class action settlement should not be approved by this court.

Respectfully submitted,

Samuel H. Sloan

Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503
(804) 384-1207

CITY OF LYNCHBURG

COMMONWEALTH OF VIRGINIA]

Palina V. Kristjansdottir being duly sworn, deposes and says that she is not a party to this action, is over wl years of age and resides at 917 Old Trents Ferry Road in Lynchburg, Virginia 24503 and that on August 20, 1975 she served the within memorandum of law by mailing a true copy of the same to:

Wolf Popper Ross Wolf & Jones Esqs.
845 Third Avenue
New York, New York 10022

Diamond & Golomb
99 Park Avenue
New York, New York 10016

Moses Krislov
800 Engineers Bldg.
Cleveland, Ohio 33114

Palina V. Kristjansdottir

Sworn to before me this
20th day of August, 1975

NOTARY PUBLIC

My commission expires Aug. 14, 77

NOTICE OF INTENTION TO APPEAR AT SETTLEMENT HEARING BY EDWARD I. FRIEDMAN (Pages A72-A79)

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED SEP 24 1975 S. D. OF N. Y.

GERTRUDE J. BONIME and LILLIAN OLDEN

vs.

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED.

No. 73 Civ. 5117 (MEL)

CLASS ACTION

NOTICE OF INTENTION TO APPEAR

Now comes Edward I. Friedman, member of the above class and owner of Canadian Javelin stock, owned individually and jointly with my wife Nettie J. Friedman.

I hereby file this notice of my intention to appear at the Hearing to be held in the above entitled matter to be held on October 17, 1975 at 9:30 A.M. before Honorable Morris E. Lasher, Judge of the United States District Court for the Southern District of New York in Room #618 United States Courthouse, Foley Square, New York, New York.

Edward I. Friedman
Jointly and several owner and also an attorney in the State of Rhode Island

Edward I. Friedman pro se

T

Diamond & Golomb, P.C.
99 Park Avenue
New York, New York 10016

Wolf Popper Ross Wolf & Jones, Esqs.
845 Third Avenue
New York, New York 10022

Moses Krislov, Esq.
800 Engineers Building
Cleveland, Ohio 33114

I, Susan Berge, certify that on the 24th day of September, 1975, I sent a copy of the within notice of Intention to Appear, by regular mail postpaid, to Diamond & Golomb, P.C., attorney for the defendant corporation, 99 Park Avenue, New York, New York 10016, Wolf Popper Ross Wolf & Jones, Esqs., attorneys for the plaintiffs, 845 Third Avenue, New York, New York 10022, Moses Krislov, Esq., attorney for the individual defendants. 800 Engineers Building, Cleveland, Ohio 33114, and also a Statement of the Basis for Objections, and a Memorandum of Supportive Authorities.

Susan Berge

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN	)	
vs.	)	No. 73 Civ. 5117 (MEL)
JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED.	)	CLASS ACTION

STATEMENT OF THE BASIS FOR OBJECTIONS

I object to the settlement proposed in the notice, in its present form and pray that it should not be approved as fair, reasonable and adequate, and propose that it shall be further amended after due hearing to be fair, reasonable and adequate.

I object to the limited amount of the settlement as being totally inadequate to cover the class members' losses.

I object to the provision on page 2 of the notice that the defendants will agree among themselves what portion of this sum each will pay.

I object to the tentative provision on page 3 which states that only class members who have sustained a loss from the sale of Javelin stock purchased from April 30, 1969 through October 1973 in excess of profits made on the sale of Javelin stock purchased during the said period will be entitled to a proportionate share of the Fund on the filing of proper Proofs of Claim.

I object to the failure to make any provisions for the shares of members of the class who had bought stock prior to the dates of these misrepresentations who have lost actual value plus paper losses due to the within stated conduct of the defendants, during this period.

I further object to the amount of the settlement due to the fact that all the stockholders who did not sell their stock during the designated period, who were induced by the indicated

statements and omissions of the defendants and who have retained their stockholdings until the stock was suspended from trading. (The stock is still under suspension and the members of the class, and the others mentioned above presently are holding the C.J.V. stock in the $2.00+ range. This stock had been purchased by many of them in the $14.00-$11.00 range. During the periods of suspension, the members of the class plus the other owners were unable to sell their stock. Any attempt to sell on the Canadian market which subsequently opened up, resulted in a very limited market, and even any consistent small sales resulting in a very great drop of market price.)

I object to the inadequate representation given my wife and myself and many other members of this class by the plaintiffs' attorney. (see 41 F.R.D. 131)

I object to the fact that the plaintiffs' attorney failed to give earlier notice to the members of the class, and it is my belief that they are probably representing two minor stockholders, and by their actions they have attempted to bind the owners of more numerous stock to their detriment.

I object to the attorneys' fees demanded by the plaintiffs' attorneys, as being too exorbitant for the work done, and because they did not work adequately for the class benefits nor for the corporation's benefits versus the individual defendants.

Respectfully submitted,

Edward I. Friedman

Edward I. Friedman

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN	)	
vs.	)	No. 73 Civ. 5117 (MEL)
JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED.	)	CLASS ACTION

MEMORANDUM OF SUPPORTIVE AUTHORITIES

POINTS RAISED

1. Inadequate representation of Class.

2. Excessive legal fee.

3. Allowing defendants themselves to apportion settlement amount among themselves.

4. Failure to provide adequate compensation to Class and others also suffering loss due to defendants' conduct.

I. Inadequate representation of Class.

A. Holding that the substantive meaning of the inadequacy of representation requirement has been changed.

Cascade Natural Gas Co. vs. El Paso Natural Gas Co., 386 U.S. 129, 156; 87 S.CT. 932, 947.

B. The rule requires only that it

"...may be inadequate."

Kozah vs. Wells C.A., 278 F.2d, 104-110 (8th Cir. 1960).

C. The showing required of inadequate representation

"...should be treated as minimal."

Trbovich vs. United Mine Workers of America, 92 S.CT. 630, (1972).

D. Individual notice to members of the Class should have been given earlier.

E. By failing to give adequate notice to as many of the members of the Class as possible, and by only going ahead

on behalf of two members of this very numerous Class, counsel for these parties had early control of litigation and, possibly to the detriment of most of the others. They have thus lost the potential advice of many knowledgeable members of the Class and Class owners possessing substantial amounts of stock. (Fed. Pract. and Procedure. Wright & Miller. Pocket Parts, Sect. 1793). Forbes vs. Greater Minneapolis Area Board of Realtors, 61 F.R.D. 416, 417 (D.C. Minn.).

F. Since plaintiffs' counsel claimed that they issued interrogatories and filed motions to produce, they could have found the names of other prospective members of the Class by propounding the questions to the defendant corporation to produce names of purchasers or sellers of their stock shown on their records, during the period between 1969-1973, and given them notice as to the various techniques being planned and as to the tentative agreement of settlement. This case is contra the findings in Hook vs. Wainwright, 352 Fed.Supp. 163 (D.C. Florida 1972).

G. I feel that my interest and that of my wife are not adequately represented by the present plaintiffs' counsel.

II. Excessive legal fee.

A. "The class action device must be protected against the taint that it is a source of strike suits promoted by attorneys who simply seek fat fees."

§1803 Wright & Miller, Alpine Pharmacy vs. Chas. Pfizer & Co., C.A. 2d (1973).

"Held therefore that great care should be taken in keeping records of time spent on the case by each lawyer."

(idem)

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B. Court refused to assess attorney's fee in a class action based upon a percentage specified in the contingent agreements entered into by some plaintiffs, since it resulted in an award far in excess of the time involved.

State of Illinois vs. Harper & Row Publishers, 55 F.R.D. 221, 224 (D.C. Ill. 1972).

C. Judge Decker stated further:

> "On the whole, I think counsel and the Bench in class actions adhered too closely to this contingent fee syndrome, and the time has come to inject a modicum of flexibility and creativity into the award of counsel fee."

D. An attorney's fee of $260,000.00, where many members of the Class have lost so much from these misleading and inducing statements of the defendants, will result in their receiving a very small pittance to cover their loss.

E. Such a fee is unreasonable and unfair (see Vol. 10, §2675, Wright & Miller.).

F. See also United Federation of Postal Clerks A.F.L. C.I.O. vs. U.S., 64 F.R.D. 13 (D.C. Pa. 1973) (fee not based on percentage).

G. Also see Levin vs. Mississippi River Corp., 377 Fed.Supp. 926 (D.C. N.Y. 1974), where the Court held:

> "Agreement by parties have some bearing, but not controlling."

This should be especially so where clients of attorneys are probably minor stockholders attempting to bind the great majority of the Class.

I. See also City of Detroit vs. Grinnell Corp., 495 F.2d 448, 468 (C.A. 2d).

III. Allowing defendants themselves to apportion settlement figure among themselves.

A. Mr. John Doyle, Executive Director of C.J.V., is the master mind of Canadian Javelin. In the past 13 years to my personal knowledge, he has had practically absolute control of the corporate organization and its plans.

B. He was the originator and the developer of the projects undertaken by Canadian Javelin, including the Liner Board project and the recent Panama copper mine project; he is the spokesman for the corporation. His decision on all important matters prevails. If the corporation is allowed to decide how much each of the above three defendants will contribute to the Fund, the corporation will end up paying the lion's share.

C. The more the corporation pays out, the less their income and the more their stock will drop to the further detriment of the Class and the stockholders.

D. This Class action should not have been started against the corporation because actually they were not directly the guilty party. The main statements with respect to these projects were individually made, mainly by John Doyle, the Executive Director. The flyers issued and the annual report statement of progress also came from the same source.

IV. Failure to provide adequate compensation to Class and others also suffering loss due to defendants' conduct.

The proposed settlement amount for the Class is very inadequate.

The price of the C.J.V. stock has dropped very drastically, and if the stock submitted by the Class is around 1,000,000 shares, each member of the Class, with the

attorney fee taken out, will get less than$1.00 a share. If the amount of the stock submitted is 2,000,000 shares, the Class will get less than $.50 a share. However, based upon information and belief, there are in existence stock in excess of 4,000,000 shares, and therefore, their payment will result in the distribution of less than $.25 a share.

B. There are numerous stock owners who bought shares before 1969, even though they do not come within the Class, they continued to own the stock during the period involved. Their stock, if they kept it during and subsequent to the period herein considered, also took a tremendous loss, due to the defendants' actions, and they will not, because of this Class action, be able to recoup any of their loss.

C. Also, to require that those of the present Class who purchased their stock in this period, must sell their stock to establish a loss, is very unfair to them. Many of the members of this Class are still holding their stock, purchased during this period. And since it is almost worthless to sell their stock at present values, to prevent these persons from sharing in even this small reimbursement, because they did not sell to establish a loss, seems imminently unfair.

Respectfully submitted,

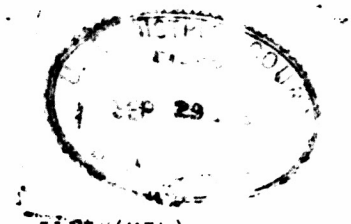
Edward I. Friedman

Edward I. Friedman

pro se.

September 24, 1975

OBJECTIONS TO PROPOSED SETTLEMENT BY DOROTHY AND MORRIS KLEIN (Pages A80-A83)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs,	:	73 Civ. 5117 (MEL)
against		CLASS ACTION
JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED, Defendants.	:	

OBJECTIONS TO PROPOSED SETTLEMENT

Permission to file written objections to the Proposed Settlement herein having been granted as set forth in Exhibit A hereto, the undersigned members of the class approved herein state their objections as follows:

1. Dorothy F. Klein, residing at 2150 Sans Souci Boulevard, North Miami, Florida 33181, is presently the owne of 531 shares of Canadian Javelin Limited Common Stock, 400 shares of which were purchased during the first class period.

2. Morris F. Klein, residing at the same address, is presently the owner of 106 shares of Canadian Javelin Limited Common Stock, 100 shares of which were purchased during the first class period.

3. Neither objector has ever sold or otherwise disposed of any shares of such stock.

4. The Notice to the class pursuant to the Court's Order filed July 9, 1975 appears to indicate that only class members who have sustained a loss from the sale of Javelin stock in excess of profits made on the sale of Javelin stock may share in the Settlement Fund and consequently that those stockholders who have not sold their stock may not share in such fund. (See last paragraph under heading, "The Settlement").

5. The Stipulation of Settlement does not appear to contradict the provisions of the Notice referred to in paragraph 4 above for while it provides a method for determining loss sustained, it bases such loss on the difference between the purchase price of the shares and the greater of (i) the selling price of the shares or (ii) the closing price of the stock on the American Stock Exchange on a certain trading date and does not seem to cover a stockholder who has sustained a loss by virtue of the purchase and holding of the stock in reliance on the representations of the defendants and because they have not learned of such misrepresentations until receipt of the class Notice herein have not disposed of their shares.

6. It is submitted that the Proposed Settlement is neither fair, reasonable or adequate because it does not provide that all shareholders who purchased during the class period and still retain their shares should be entitled to a share of the Settlement Fund.

7. It is submitted further that the Proposed Settlement is neither fair, reasonable or adequate, in not providing that the loss to shareholders who purchased during the class period and still retain their shares should be determined by the difference between the purchase price of the shares and the market value of the shares at or after the time the Notice to the class was received by the shareholder.

8. It is submitted further that the loss to shareholders who purchased during the class period and still retain their shares may be the entire purchase price of such shares since by action of the Security Exchange Commission, the shares could not be traded by citizens of the United States at any time since the Notices to the class were forwarded to the members thereof.

Since these Objections are addressed to the discretion of the Court, no memorandum of law is submitted herewith.

Wherefore, the Court is respectfully requested to disapprove the Proposed Settlement unless it is amended and clarified as indicated above.

Respectfully Submitted,

Dorothy F. Klein

Dorothy F. Klein,

Morris F. Klein

Morris F. Klein.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that true copies of the foregoing Objections to Proposed Settlement, were mailed to Wolf Popper Ross Wolf & Jones, Esqs., 845 Third Avenue, New York, New York 10022, attorneys for the plaintiffs; Diamond & Golomb, P.C., 99 Park Avenue, New York, New York 10016, attorneys for defendant Canadian Javelin Limited, and Moses Krislov, Esq., 800 Engineers Building, Cleveland, Ohio 33114, attorney for the individual defendants, this 25th day of September, 1975.

By Morris F. Klein

Morris F. Klein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

September 3, 1975

Morris F. Klein, Esq.
Blackwell, Walker, Gray, Powers,
Flick & Hoehl, Esqs.
2400 First Federal Building
One Southeast Third Avenue
Miami, Florida 33131

Bonime v. Doyle
73 Civ. 5117

Dear Mr. Klein:

Your application of August 22nd, to file written objections to the proposed settlement without appearance in person or by counsel is granted.

Very truly yours,

MEL/cw
cc: Wolf, Popper, Ross, Wolf & Jones, Esqs.
Diamond & Golomb, P.C.
Moses Krislov, Esq.

[EXHIBIT A]

AFFIDAVIT OF ROBERT M. KORNREICH DATED JANUARY 14, 1975 IN SUPPORT OF CLASS ACTION MOTION (Pages A84-A91)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

73 Civ. 4117 (MEL)

JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN LIMITED,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT M. KORNREICH, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Wolf Popper Ross Wolf & Jones, attorneys for plaintiffs in this action. I am fully familiar with the facts and proceedings herein, and I submit this affidavit in support of the instant motion of plaintiffs for an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, determining that the action may proceed as a class action.

2. This action was commenced on December 3, 1973 by plaintiff Gertrude J. Bonime and others similarly situated. By a decision and order of the Court dated December 11, 1974 Lillian Olden was added as a party plaintiff. The complaint alleges in substance that defendant Canadian Javelin Limited (the "Company") and its principal officers, defendants John C. Doyle and William M. Wismer, engaged in a manipulative plan and scheme and course of conduct in violation of the federal securities laws to inflate the price of the Company's stock during the period commencing early 1969 and continuing through 1973. The complaint charges that during

the relevant period the Company failed to disclose material facts concerning its project to manufacture linerboard in Newfoundland, and its mining activities in Panama as more particularly described hereinafter. The action seeks to recover damages for plaintiffs and others similarly situated which they suffered as a result of their making purchases of the Company's stock at inflated prices.

3. Prior to the institution of this action, the American Stock Exchange on October 25, 1973, suspended trading in the Company's stock because of the alleged failure to disclose material facts concerning the Panama situation. This suspension is still in effect. Thereafter, the acts and transactions complained of herein were attacked in an action filed by the Securities and Exchange Commission (73 Civ. 5074) seeking injunctive relief against defendants. While the instant action was pending, the defendants, without admitting or denying liability, entered into a consent judgment in the Commission action enjoining them from future violations of the securities laws and, among other things, providing for full disclosure of the Company's affairs. Subsequently, the Company issued various press releases as well as its 1973 Annual Report which fully disclosed the status of the affairs of the Company, its linerboard project and mining activities in Panama.

4. Pursuant to an extensive request to produce documents served on the Company, plaintiffs have examined voluminous documents in Chicago, Ill., and Washington, D.C., and the examination and evaluation of these documents is now nearing completion. Notices of Depositions of the Company and defendant Wismer, as well as of certain Canadian officials, have been served and we expect to begin the taking of testimony just as soon as certain additional documents which recently

became available are received. The time to make the instant motion has been extended by stipulation and order of the Court and presently expires January 15, 1975.

5. In accordance with the mandate of Rule 23 that a class determination be made "as soon as practicable", we request that a class should now be determined. Based upon the discovery conducted thus far, we respectfully submit that the action may properly proceed on behalf of all persons who purchased the Company's stock (excluding defendants) during the period beginning on April 30, 1969, the date when the Company first issued an allegedly false and misleading annual report, and ending October 25, 1973, the date the American Stock Exchange ordered the suspension of trading in the Company's stock. This action clearly satisfies the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The requirements of Rule 23 are discussed in detail in plaintiffs' memorandum of law and will not be repeated at length herein. However, I will briefly in this affidavit refer to some of the matters related thereto.

6. There can be no dispute that the class is so numerous that joinder of all members is impracticable. The Company's common stock has been listed and traded on the American Stock Exchange during the relevant period. Its common stock has been actively traded so that members of the class will clearly number in the thousands.

7. Also, there can be no dispute that there are common questions of law and fact to warrant the maintenance of this action as a class suit. These common questions of law and fact include whether there has been a single plan and scheme and course of conduct to conceal material facts about the financial and business operations, and prospects of

the Company regarding its project to manufacture linerboard in Newfoundland and its mining project in Panama and whether as a result defendants have inflated the price of the Company's stock in violation of Section 10 and Rule 10b-5 of the Securities Exchange Act of 1934. Essentially, our discovery indicates that in the public reports and releases issued by the Company during the relevant period, there was a continuing failure to disclose common material facts. With regard to the linerboard project, it appears that the public reports and releases issued throughout the period did not reveal (i) the true size and anticipated profitability of the project or its commercial feasibility; (ii) the true production quality and quantity of the project; (iii) the true cost of the project or that said cost far exceeded cost projections; (iv) the true extent of the financing needed to support the project, and the extent of financial support received or to be received from the Newfoundland Government and the disposition of such funds; (v) the serious disputes between the Company and the Newfoundland Government concerning the project; (vi) the serious obstacles encountered in obtaining necessary financing; and (vii) the dispute with the Newfoundland Government with regard to $4.3 million allegedly due to the Company arising out of the takeover of the project by the Newfoundland Government. With regard to the Panama project and particularly in 1973, there appears to have been a repeated failure to disclose that the right of the Company to exploit the ore in the Cerro Colorado area of Panama is highly speculative; that no final commercial feasibility study exists; that financial arrangements to begin mining and production do not exist and that the Company is still negotiating to sell part or all of the output of the project and no sales agreement as yet exists. As indicated in our

memorandum of law submitted herewith, a situation where as here, there is a common plan and scheme and course of conduct to conceal material facts presents a classic case for class action treatment.

8. The interests of the class will be fairly and adequately protected as required by Rule 23 since plaintiff Bonime purchased her stock in May 1970 at a price allegedly inflated by the plan and scheme while the Company was actively engaged in the project in Newfoundland to produce and distribute linerboard, and plaintiff Olden made various purchases of the Company's stock in September and October 1973 just prior to the present suspension of trading in the Company's stock at prices which continued to be inflated by the additional fraudulent conduct pursuant to the plan and scheme with respect to the Company's mining activities in Panama. It is obvious that their claims are typical of the claims of the class since together they seek to show the same improper conduct which will constitute the basis for claims of all other members of the class. Moreover, they will fairly and adequately protect the interests of the class since they intend to vigorously prosecute the litigation and are presently attempting to do so.

9. Our firm clearly possesses the qualifications necessary to properly represent the interests of the class in this action. Plaintiffs' attorneys, with considerable experience in the field of corporate practice, have been innovative and successful in actions brought to vindicate the rights of stockholders. In this regard we refer this Court to the recent decisions of Schein v. Chasen, CCH Fed. SEc. L. Rep. ¶ 93,984 (2d Cir. 1973) remanded --U.S. -- (4/29/74) and Shapiro v. Merrill Lynch, Current CCH Fed. Sec. L. Rep. ¶ 94,473 (2d Cir. 1974). The importance of these decisions have been the subject of numerous articles

in the New York Law Journal and other periodicals. Recently, Philip Jones, a member of our firm, was designated by Judge Lee P. Gagliardi as ex-officio liaison counsel for plaintiffs in all of the actions commenced in the Southern District of New York arising out of the Equity Funding Corporation of America scandal. Following the transfer of the New York actions to the Central District of California, he was designated one of three special counsel to conduct all pretrial discovery on the East Coast and other liaison functions. Our firm was Co-Lead Counsel for the stockholder plaintiffs in Rabinowitz v. Carter Group, 69 Civ. 4361 in which a settlement of a class action conferring a $12,500,000 benefit upon the stockholders of Utilities & Industries, Inc. was recently achieved. It should also be noted that on March 17, 1971, Judge Milton Pollack, presiding at a settlement hearing in a derivative action entitled Zerkle, et al. v. Cleveland-Cliffs Iron Co., et al., 70 Civ. 2507, made the following comment about our firm:

> "I know of your standing in the community and also your standing at the Bar, and have a very high opinion of the expert knowledge, competence and fairness with which you conduct derivative litigation."

In a series of class actions entitled Berland v. Great American Industries, et al., 66 Civ. 1755, et al., Judge Mansfield appointed our firm as General Counsel for all the plaintiffs. Thereafter, in deciding a motion to declare the consolidated action as a class action, Judge Mansfield had occasion to refer to his earlier appointment of our firm as General Counsel for the consolidated action. In that connection, in his opinion (48 F.R.D. 121 (S.D.N.Y. 1969)), he said about our firm's representation of the plaintiffs (at p. 127):

> "They are represented by outstanding counsel who are experienced in the conduct of stockholders' litigation and aware of their responsibilities."

He added (at p. 127):

> "We are satisfied, therefore, that both plaintiffs and their counsel would adequately represent the class in that there is no likelihood that they would handle or dispose of the litigation in a collusive manner or act in any way antagonistic to the interests of the class."

At a later point (at p.128), he referred to our firm as the plaintiffs' "high-calibre, experienced counsel." The actions were recently settled with substantial benefits gained by the members of the class. Finally, this year, Judge MacMahon recognized our expertise by his appointment of our firm to serve as lead counsel in a consolidated class action case entitled Lewis v. TelePrompTer Corp., 73 Civ. 3929.

10. It is clear that a class action is superior to any other available method for the fair and efficient adjudication of this controversy. Indeed, since the damages to the vast majority of the members of the instant class may be insufficient to justify the commencement of a separate action for the relief sought herein, a class action on their behalf is no doubt the only meaningful method by which the rights of most of the members of the class can be effectively enforced. It should be noted that although some of the Panama nondisclosures in 1973 are not common to earlier purchasers of the Company's stock, since plaintiffs' purchases of the Company's stock were made during the period of all of the relevant activities, they would be adequate representatives of any appropriate subclass which the Court may at any later time determine if it becomes necessary or desirable to do so. While the Court, of course, has flexibility to provide for such subclasses if it should ever become necessary or desirable in the future, we do not believe that this procedure would be economical or

beneficial at this point and indeed it might well result in prejudicial duplication, delay and expense to all the members of the class. In the absence of any present need to do so, the Court should not now provide for subclasses and should allow the action to proceed on behalf of a unified class.

11. While the facts developed thus far indicate that the class determination sought is now appropriate, the Court has discretion to limit or expand the class if subsequent discovery warrants such change. In view of the fact that substantial discovery still remains in this case, we request that notice to the class required by Rule 23(c) be delayed until such discovery is completed. There is substantial authority in this and other jurisdictions recognizing the desirability of such a procedure (see plaintiffs' Memorandum of Law, pp.10-11).

12. For all of the foregoing reasons we respectfully submit that the present motion for an order declaring that this action is maintainable as a class action on behalf of all purchasers (except defendants) of the Company's common stock during the period April 30, 1969 to October 25, 1973 should be granted in all respects, and that notice pursuant to Rule 23(c) should be delayed until completion of discovery.

Robert M. Kornreich
ROBERT M. KORNREICH

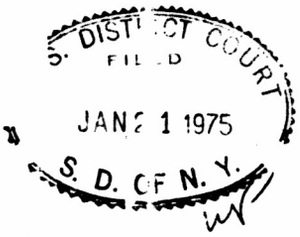
Sworn to before me this
14th day of January, 1975.

Bertha Feldman
Notary Public

BERTHA FELDMAN
Notary Public, State of New York
No. 41-1154735
Qualified In Queens County
Commission Expires March 30, 1975

BERTHA FELDMAN
Notary Public, State of New York
No. 41-1154735
Qualified In Queens County
Commission Expires March 30, 1975

AFFIDAVIT OF DEFENDANT CANADIAN JAVELIN LTD. DATED JANUARY 20, 1975 CONSENTING TO PRELIMINARY DETERMINATION OF CLASS ACTION
(Pages A92-A93)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN LIMITED,

Defendants.

----------X

73 Civ. 5117 (MEL)

AFFIDAVIT CONSENTING TO PRELIMINARY DETERMINATION OF CLASS

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

IRVING L. GOLOMB, being duly sworn, deposes and says:

1. I am a member of the law firm of DIAMOND & GOLOMB, P.C., attorneys for defendant CANADIAN JAVELIN LIMITED. I am fully familiar with the facts hereinafter set forth and submit this affidavit consenting to the preliminary determination of a class in accordance with plaintiffs' motion.

2. The foregoing consent is based upon the understanding that the determination to be made by the Court will be a preliminary determination.

3. Pursuant to the provisions of Rule 23 (C) (1) of the Federal Rules of Civil Procedure, the Court would have full power to cancel, revoke, or modify such preliminary determination at a later time. It may also issue such procedural and protective orders as may be necessary to regulate the course of

this suit as a class action, pursuant to Rule 23 (D) of those rules.

4. A preliminary determination of a class at this time may assist the parties in conducting discovery. It may also prove useful in narrowing and defining the issues.

5. It is the understanding of this defendant that the entry of a preliminary order defining a class would be without prejudice to its right to assert, in a subsequent motion, after discovery relating to the class issue, any and all objections that may be appropriate with respect to the issues of class definition and class representation.

WHEREFORE, defendant, CANADIAN JAVELIN LIMITED, consents to the preliminary determination of a class in accordance with plaintiffs' motion.

IRVING L. GOLOMB

Sworn to before me this

22 day of January, 1975.

JOHN K. WARSAW
Notary Public, State of New York
No. 30-0540126
Qualified in [illegible] County
Commission Expires March 30, 1976

DIAMOND & GOLOMB LETTER AUTHORIZING PICK-UP OF CLAIMS

75 CV 5117 ME

Diamond & Golomb P.C.

COUNSELLORS AT LAW

IRVING L GOLOMB
AARON M DIAMOND

JOHN K. WARSAW

99 Park Avenue
New York, N.Y. 10016

TELEPHONE 687-7550

OCT 7 1975
S. D. OF N. Y.

October 7, 1975

U. S. District Court
Foley Square
New York, New York 10007

Re: Bonime v. Doyle

Gentlemen:

This will authorize the bearer, on behalf of our office, to pick up from you, all or many as he may be able to take from time to time, of the proofs of claim received by your office in the above matter.

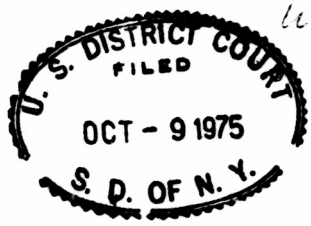
Thank you.

Very truly yours,

AARON M. DIAMOND

AMD:jo

AFFIDAVIT OF BENEDICT WOLF DATED OCTOBER 8, 1975 IN SUPPORT OF PROPOSED SETTLEMENT (Pages A95-A[illegible])



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDE.,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. [illegible] CANADIAN JAVELIN LIMITED,

Defendants.

73 Civ. 5117 (MEL)

AFFIDAVIT

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

BENEDICT WOLF, being duly sworn, deposes and says:

1. I am a member of the firm of Wolf Popper [illegible] Jones, attorneys for the plaintiffs in this [illegible] am fully familiar with the matters contained in [illegible] affidavit.

2. This affidavit is submitted in support of [illegible] settlement of the above entitled action.

3. This action, which was commenced on [illegible], 197[illegible], was brought as a class action by plaintiff [illegible] Bonime against defendants Canadian Javelin [illegible] Javelin", and its principal officers, John C. Doyle, [illegible] and Chairman of the Executive Committee and [illegible] a director and President.

BEST COPY AVAILABLE

The Nature Of The Action

4. The action is brought on behalf of all purchasers of Javelin stock during the period of the wrongful conduct alleged. The complaint alleges in substance that defendants disseminated false and misleading statements which resulted in the artificial inflation of the stock of Javelin in violation of Section 10b of the Securities Exchange Act of 1934 as amended (the "Act"), Rule 10b-5 promulgated thereunder and the common law. Plaintiffs allege that as a result the stock purchased by plaintiff and other members of the class was worth substantially less than the price paid by them.

5. The events covered in the complaint involve two important projects of Javelin. We alleged that Javelin, a Canadian corporation, was engaged in a project started in 1968 to build and develop facilities for the manufacture of linerboard, a wood product, in the province of Newfoundland, Canada (hereafter the "Linerboard Project"). Subsequently, it became heavily involved in a project to discover and exploit mineral resources in the Cerro Colorado area and other areas of Panama (hereinafter the "Panama Project").

6. The complaint alleges in substance that commencing in 1969 Javelin issued public reports that indicated that linerboard production would commence in 1971 and that the linerboard mill complex would be the largest and most up-to-date in the world. These optimistic statements were false and misleading because Javelin failed to reveal with respect to the project the true size,

anticipated profit feasibility, the true quality and quantity of production, the true cost, the fact that the actual cost was exceeding cost projections, the extent of financing required, the extent of governmental financial support, the disposition of the funds, obstacles encountered in obtaining financing, and certain serious disputes between Javelin and the Newfoundland government. In May, 1972, the Newfoundland government took over the Linerboard Project.

7. In connection with said government take-over of the Linerboard Project defendants reported in April, 1973 a $4.3 million current asset, which represented the amount claimed by Javelin to be due from the government. Javelin failed to reveal that the government did not acknowledge the claim and that Javelin did not take the necessary steps to establish the claim, such as instituting an arbitration proceeding and that, as a result, Javelin's working capital was grossly inflated.

8. The complaint further alleges that Javelin publicly misrepresented the situation with respect to its Panama Project. Specifically it is alleged that it represented that it had a right to exploit an alleged large copper discovery in the Cerro Colorado area of Panama when in fact such right was highly speculative, that it had made commercial feasibility studies when in fact no final commercial feasibility study exists, that it had made financial arrangements to begin mining and production, and had an agreement to sell the entire initial output when in fact Javelin was still in the process of negotiating the sale of the output of the project.

Securities and Exchange Commission Action

9. In November, 1973, the Securites and Exchange Commission ("Commission") instituted an action in this Court against Javelin, Doyle and Wismer. The action involved the same wrongful conduct alleged herein. The Commission singled out the 1968, 1969 and 1970 Annual Reports of Javelin issued to its stockholders concerning the Linerboard Project, and focused on the period of 1971 - May, 1972 during which time material difficulties were allegedly experienced in said Project. With respect to the Panama Project, the Commission singled out Javelin's press releases issued on June 22, 1973, July 5, 1973, July 17, 1973, August 31, 1973, September 5, 1973, and September 19, 1973. The Commission, in addition to charges of violation of Section 10b, Rule 10b-5 and the reporting sections of the Act, also alleged violations of Section 5 of the Securities Act of 1933. It asked for injunctive relief with respect to the alleged violations, and the appointment of a Special Receiver because of the alleged seriousness of the wrongdoing. It cited the difficulty facing it in the case because of defendant Doyle refusing to give sworn testimony concerning Javelin's financial status and business operations, as well as the unavilability of other key witnesses.

10. Subsequently, in July, 1974 a consent judgment was entered in the Commission action. The Commission dropped its request for a Special Receiver and settled for Javelin's agreeing to an injunction against future violations,

ordering further filings to be made amending or supplementing earlier filings, a provision for minority outside independent directors to be proposed by Javelin, the designation by Javelin of an agent in the United States to receive process on behalf of defendants, and of a single public information officer, the establishment of a standing compliance committee to be comprised of a majority of independent board members, and a special counsel to the standing committee satisfactory to the Commission. The defendants did not admit liability in the Commission's action.

Proceedings In This Action

11. The defendants served answers to the Complaint denying the class allegations as well as the material allegations of wrongful conduct, and asserting affirmative defenses including lack of jurisdiction and failure to state a claim for relief.

12. In order adequately to evaluate the merits of the claims asserted in the complaint and properly to prepare the case for trial, it was necessary for us to make an extensive study and investigation of the facts and the laws relating to the matters set forth in the complaint. Accordingly, we sought through discovery, to obtain all information relating to the issues raised by the pleadings in the case.

13. On January 25, 1974 we served an extensive Request for Production of Documents upon defendants. In

response, a voluminous amount of documentary materials comprising thousands of pages was produced by Javelin. While Javelin produced all available documents in response to this request, it indicated in its response that a great number of documents had been seized on December 15, 1972 by the Royal Canadian Mounted Police ("RCMP") in connection with criminal warrants, at the offices of Javelin in Montreal, Canada and elsewhere. Many of the documents which fell within the Request therefore could not be produced because they remained in the custody of RCMP. Javelin did however indicate a willingness to produce the documents which it retained or recovered from the RCMP subject to a protective stipulation and order as to disclosure and use so as to preserve the confidentiality of business and commercial information. Accordingly, such protective order was agreed to and the documents were thus made available to us.

14. Plaintiff's attorneys reviewed the documents at Javelin's attorneys' offices in Washington, D.C. and Chicago, Illinois. After this review,we requested and were supplied with copies of most of the documents which were made available and we evaluated and analyzed each document. The documents included correspondence,memoranda, letters of intent, technical studies and reports prepared by and for Javelin, minutes of the Board of Directors and Executive Committee meetings, all press releases issued by Javelin, all public reports filed by it with government agencies, budgets, opinion letters from Javelin's counsel in Panama,

communications and other documents issued by the government of Newfoundland concerning Javelin. In sum, we were able to obtain substantial documentary materials which shed a great deal of light on the transactions necessary to an understanding of the issues raised in the case.

15. After completing our review of the documents, the parameters of the class became evident. While we could not come to any conclusions as to liability, it was clear that there was a common course of conduct and many issues common to the class concerning the two Projects in issue. However, in order to ensure that no question could arise concerning the adequacy and typicality of the claims of the class representative, we moved to add Lillian Olden as a party plaintiff, since Lillian Olden had purchased Javelin stock in September and October, 1973, during the time period of the Panama Project, whereas plaintiff Bonime had purchased her stock in May, 1970 during the time period of the Linerboard Project. Our motion was granted on December 11, 1974.

16. In accordance with the mandate of Rule 23 of the Federal Rules of Civil Procedure that class action status be determined "as soon as practicable", we moved for a class action determination on January 14, 1975. A class was sought composed of persons who bought Javelin stock beginning on April 30, 1969, the date of issuance of Javelin's 1968 Annual Report, the first of the allegedly misleading reports as indicated by our discovery, and ending on October 25, 1973, the date Javelin stock was suspended at the opening of trading on the American Stock Exchange.

17. Before the return date of the class action motion, plaintiff also moved for leave to serve an amended complaint in order to assert violations of Sections 17 and 5 of the Securities Act of 1933, based on the allegations already in the complaint. Defendants did not contest these motions but reserved their rights under Rule 23(c)(1) to decertify the class if additional discovery warranted. The class sought was certified on February 10, 1975 and at the same time, the Court granted the motion for leave to amend the complaint.

18. We concluded that in addition to the extensive documentary discovery which we had been able to secure, it was vital to depose persons with first hand knowledge of the facts involved. In New York, we conducted the deposition of John A. Rozzini, Project Manager of the Linerboard Project, and later Vice President of Projects in charge of the Cerro Colorado Project, and Irving Golomb, Esq., counsel to Javelin, who was familiar with certain aspects of the Linerboard Project and who personally negotiated the terms under which the Newfoundland government took over the Linerboard Project and who also negotiated the claims against that government arising out of said take-over. In Nassau, Bahamas, we conducted the deposition of defendant John A. Doyle and Peter LaRush, a Vice President of Pavonia, S.A., the subsidiary of Javelin through which Javelin's Cerro Colorado operations were conducted. Defendant Doyle refused to testify, pleading the Fifth Amendment, and we were informed by defendant Wismer's attorney that he would take the same position.

19. We also attempted to obtain the testimony of officials of the government of Newfoundland, even offering to travel to Canada for this purpose, but these officials, which included the Premier of Newfoundland, asserted defenses f governmental privilege and sovereign immunity and refused to be deposed.

20. In excess of 550 pages of testimony were taken over five days and 86 exhibits, many of which contained voluminous information, were referred to and marked as plaintiffs' exhibits. Many times this number of documents, of course, had been examined by plaintiffs' counsel and the exhibits which were actually introduced were those which were most relevant to the subject matter under inquiry.

21. In addition to oral depositions, plaintiffs' attorneys, on January 29, 1975 served written interrogatories on defendants and thereafter received extensive answers from Javelin. Doyle and Wismer adopted Javelin's answers to the extent that the information contained therein was not self incriminating and reserved their right to object on Fifth Amendment grounds.

22. From the testimony of the witnesses, it became apparent that the refusal of Doyle and Wismer to testify would create considerable difficulties for us in the way of proving our case (difficulties which the Commission had apparently also recognized) and that the resistance of the Newfoundland officials to testify would also be a major

problem in our efforts to prepare for trial. We were quite aware that it would be futile to try to secure testimony from the Panamanian government officials, including the President of Panama, who were involved directly with Doyle in various conferences.

23. At this point, we decided it was necessary objectively and soberly to re-examine the allegations of the amended complaint in light of the information obtained by us, so that a realistic evaluation of the case could be made.

THE EVIDENCE DISCLOSED BY PRETRIAL DISCOVERY

The following information was obtained from the depositions, answers to interrogatories and documents reviewed by us.

The Panama Project

(a) The evidence concerning Javelin's right to exploit the Cerro Colorado Concession.

24. On August 17 and 25, 1971, and again on June 22 and July 17, 1973 Javelin issued press releases which stated that Javelin had the right to exploit the minerals in the Cerro Colorado area of Panama. On July 17, 1975, Javelin issued a press release which appeared to confirm Javelin's rights of exploitation.

25. The pertinent evidence with respect to our claim that such reports failed to disclose that Javelin's exploitation rights were highly speculative was as follows:

26. Javelin had conducted exploration activities in Panama without a contract at first, and then negotiated two contracts, Nos. 61 and 50, dated November 17, 1971 and June 22, 1972, respectively. Under paragraph 5 of these agreements, which were between Pavonia, S.A., Javelin's subsidiary, and the government, the Mineral Resources Code of Panama was incorporated by reference. Article 12(c) of tne Code provides in pertinent part:

> "Every exploration concession shall, while it is in force and effect, grant the concessionary the following rights ... (c) to obtain in an exclusive manner, once a mineral that may be produced in commercial quantities is found, a concession that would cover the extraction operations in accordance with the privileges, terms and conditions in existence at the time at which the exploration concession was granted."

With respect to the August, 1971 press release, the testimony disclosed that Javelin relied on this provision of the Code and that a commercial body of ore had been discovered by this time.

27. According to the testimony, while the Code provided for terms such as royalties and taxes, various conditions and terms of a contract to cover the project enumerated were not defined in the Code or were not applicable to a project of this magnitude. Therefore, it was mutually agreed that negotiation of a special contract was desirable, notwithstanding Javelin's rights to a contract under existing law, and such negotiations were revealed in Javelin's 1972 Annual Report to the Stockholders.

28. Prior to the June 22, 1973 press release, Javelin had been provided with drafts of a proposed new Mineral Code. However, an examination of this draft which we obtained did not reveal any material change in the existing Code with respect to the holder of a concessionary's right to an exploitation agreement. According to the testimony, the negotiations with government officials continued. One such meeting attended by Doyle, LaRush and General Torrijos, the President of Panama, was referred to in the July 17, 1973 press release. LaRush testified that during this meeting the location of a port facility was agreed to and other items were discussed such as power, tailings, housing and port facilities. There was no indication at this meeting that Javelin would not be receiving an exploitation contract.

29. On August 22, 1973, the Panama government amended the Mineral Resources Code so that Article 12(c) provided that a holder of an exploitation concession had

> "The first option to negotiate a concession which covers the operations of extraction in accordance with the terms and conditions stipulated by the National Government, once a mineral is discovered that could be produced in commercial quantities."

30. Subsequent to August 22, 1973, Ferrando Manfredo, Panama's Minister of Industry and Commerce made statements to the effect that Javelin did not have a vested right to an exploitation agreement. These statements received wide publicity in the wire services and in the newspapers.

31. Thereafter, Javelin requested and received three opinions of counsel, which opinions affirmed that Javelin had a vested right to an exploitation agreement and that the law of August 22 could not be applied retroactively. Two of the authors of the opinion letters, Dr. Fabrega and Dr. Anguizola (the latter was a former Supreme Court Justice) were not affiliated in any way with Javelin or its subsidiaries.

32. Mr. Rozzini and Mr. LaRush both testified that the amendment to Article 12(c) of the Mineral Code came as a complete surprise to them and that they had no prior knowledge of this impending change in the law.

33. While negotiations with the government with respect to the items previously mentioned continued in September, 1973, Javelin also engaged in serious negotiations with British companies with respect to marketing of the copper and other minerals to be produced by the project.

34. In sum, the testimony was to the effect that while one high government official was of the view that the August 22, 1973 law changed Javelin's exploitation rights into an option for an exploitation concession, the government continued to negotiate and there was no reason to believe that a favorable exploitation agreement would not be obtained.

35. Ultimately in 1975, the negotiations with the government broke down and no agreement was reached.

(b) The evidence concerning the feasibility studies prepared with respect to the project.

36. In a letter to its stockholders, dated December 20, 1972, Javelin announced the receipt of a feasibility study prepared by Technical Economists Limited ("TEL"). This report was described as "demonstrating the economic viability" of development of the Panama Project, and further indicated "an attractive profit potential with a high rate of return well above the minimum level normally sought for mining investments in Latin America." In a press release dated June 22, 1973, Javelin also referred to the availability of a definitive commercial feasibility study to be received in early August, 1973, and again referred to the imminence of such report in a press release of July 17, 1973.

37. The evidence disclosed that the TEL report was received in November, 1972. According to Rozzini's testimony, Javelin relied upon page 29 of the TEL report entitled "Economic Viability of the Cerro Colorado Deposit" and upon page 30 "Financial Analysis of the Proposed Mining Operations," which pages supports the economic viability of the project. On page 32, the TEL report specifically stated that even under unfavorable conditions with no tax holiday and a 50% corporate income tax, the rate of return which could be expected was 37%, and that 30% was the minimum normal return on such investments in Central America.

38. Rozzini further stated that Mr. Magyar, the author of the TEL report, had himself read a draft of the December 20 press release and had approved the language describing the conclusion of his report. Furthermore, Rozzini stated his opinion as an engineer that even a lower return than 30% which the TEL report indicated was the normal acceptable return on capital would still make the project economically viable. He believed that the range of return for the project was probably in the area of 20-30%. In fact, a later study by Wright Engineers, Ltd. independently confirmed the TEL conclusion of the economic viability of the project.

39. The evidence disclosed that a final commercial feasibility study was completed by Wright Engineers, Ltd. in August, 1973 and was received by Javelin in September, 1973.

(c) The evidence regarding the construction of the project.

40. In its press release of June 22, 1973 Javelin stated that it "is now moving from the exploration stage to that of construction", and its July 17, 1973 press release referred to its plans "to complete the heavy duty road now being constructed." Mr. Rozzini testified that substantial road and bridge construction had been undertaken in 1973. He testified that the type of heavy duty road construction undertaken was not primarily designed to further exploration, but rather was essential to the commercial development of the project. He testified that a significant portion of the heavy duty main road had been built as of June 22, 1973 and construction of an important bridge had begun.

(d) The evidence concerning the marketing arrangements for the project.

41. In its press release of August 31, 1973 Javelin referred to certain technical reports which were being used "to finalize its arrangements for the sale of the product of the mine," and press release of September 6 stated in pertinent part that "Letters of Intent covering offers of financing have been proffered to Canadian Javelin as well as assurances of long term sales contracts."

42. Mr. Golomb testified that negotiations with British Kynoch Ltd. ("BKM") acting for itself and a group of British companies, had commenced in 1972, and had become serious by August, 1973. Golomb testified that, at this time BKM had stated that it was ready, willing and able to take all of the contemplated output of the project although the price term would depend on market conditions and the outcome of Panama negotiations. There had also been discussions with Anglo-American Corporation of South Africa, Ltd. and BKM with regard to financing in which assurances to finance the project had been made. However, no formal letters of intent of any kind had actually been signed prior to September 11, 1973.

43. The August 31, 1973 press had stated a world famous mining group, Anglo American Corporation of South Africa, Ltd. had become the second largest Javelin stockholder and Golomb testified that he was aware of substantial purchases made by Anglo American at this time.

44. In the middle of September, 1973, Doyle and Golomb attended a series of meetings with BKM in London during which time a Letter of Intent was signed between Javelin and BKM. The Letter of Intent was dated September 11, 1973. The Letter of Intent stated among other things that:

> "British Kynoch Metals, Ltd., on behalf of British Insulated Callender's Cables Ltd., and Imperial Metal Industries, Ltd., will negotiate for the purchase for the account of its principals the entire initial output from the project (understanding this to be between 120,000 and 150,000 metric tons p.a. blister copper) this arrangement to be extended to output of the project as subsequently developed subject to both parties being satisfied therewith.
>
> "That British Kynoch Metals Ltd., as representatives of British Insulated Callender's Cables Ltd., and Imperial Metal Industries Ltd., shall assist in obtaining financing for the project using for this purpose the above mentioned contract as security. Discussions with banks have already been initiated with the result that it is believed that the entire loan finance for the project can be obtained, subject to certain terms and conditions which will be specified by the Banks."

45. Golomb testified as to the discussion regarding financing of the project by BKM's London bankers. It was contemplated that the output contract and accounts receivable would be used as collateral security for financing the project and an amount of $5 million was contemplated.

46. Mr. Golomb further testified that he and Doyle prepared a September 19, 1973 letter to the stockholders in which it was announced that:

"British Kynoch Metals Limited on behalf of its principals, British Insulated Callender's Cables Ltd. and Imperial Metal Industries Ltd. (a subsidiary of Imperial Chemical Industries Ltd.) have mutually signed a Letter of Intent relating to the purchase of the entire initial output of metallic copper (blister) of Javelin's Cerro Colorado copper project in the Republic of Panama. This is to be extended to the output of the project as subsequently developed."

47. The September 19 letter was telexed to BKM for its review prior to release to the Javelin stockholders and the language of the letter was discussed and approved by a BKM representative.

(e) The evidence concerning the Veraguas concession.

48. On July 5, 1973, an affiliate of Javelin, Bison Petroleum and Minerals Limited, issued a press release announcing the acquisition of a concession in the area of Veraguas. Events subsequently revealed that this announcement was premature. Mr. Rozzini testified that this press release was issued in reliance on a June 21, 1973 resolution issued by the government of Panama and upon the fact that the grant of the concession was considered to be a mere formality, once this resolution had been obtained. This was also the opinion of Javelin's Panama counsel.

49. The June 21, 1973 resolution had certified that Javelin's subsidiary had met all formal requirements set forth in the Panama Mineral Resources Code and had the

requisite technical and financial ability to carry out mine operations within the requested concession. The subsidiary was required within 31 days to pay surface taxes and post a surety bond. This was subsequently done. However, the issuance of the actual concession required the signatures of the Minister of Industry and Commerce and the President of the Republic. Notwithstanding the fact that the government had certified that Javelin had met the formal requirement of the Code, Mr. Manfredo, the Panama Minister of Industry and Commerce, on August 6, 1973 informed Mr. LaRush that the requested concession violated the acreage limitations set forth in the Code if all acreage under concession to its affiliates was added to the requested concession. This was the first time Javelin became aware that it would not receive the requested concession.

50. On August 6, 1973, the Ministry of Industry and Commerce issued a resolution to the effect that the requested concession in Veraguas violated the acreage requirements of the Mineral Code. Thereafter, Javelin decided to conform to the government's interpretation of the Mineral Code and to meet the acreage requirement by giving up its concession to other Panama acreage. On August 16, 1973, it reapplied for the Veraguas concession although for somewhat less acreage and in March, 1974 this concession was eventually granted.

The Linerboard Project

(a) The relevant background

51. Pursuant to agreements with the Newfoundland government entered into in 1967, 1969 and 1971, a project

to manufacture linerboard in St. John, Newfoundland and a wood harvesting operation in Goose Bay, Labrador was undertaken. Under these agreements, the Newfoundland government agreed to guarantee completion of the construction and equipping of the project and to provide timber leases and electric power for the project. Javelin agreed to create a class of preferred voting shares and issued 5,300,000 of such shares to the Government as part of the agreements. This gave the government voting control of Javelin from the inception of the project. In addition, there was an assignment of royalties to the government with respect to monies which the government might have to expend to cure any default.

52. In 1969, the government guaranteed the first financing for the project in the amount of approximately $53,000,000. The prime contractor under a separate agreement with Javelin was Sir Robert McAlpine ("McAlpine"),and the consulting engineer was E & B Cowan ("Cowan") who was the sole judge of performance and interpreter of the Javelin-McAlpine contracts and directed the construction of the project. Under the applicable agreements, upon certification of breach by Cowan, Javelin had the right to terminate McAlpine's contract.

(b) The evidence concerning start-up of operations, cost overruns and problems with the Newfoundland government.

53. Mr. Rozzini testified it was his responsibility to coordinate all of the functions of the Linerboard Project

and specifically to see to it that the project ran within the budget and to prevent cost overruns. The original cost projection made in 1969 by the company was between 130 and 140 million dollars, which included both the mill and wood harvesting operations. In addition, a 1969 study made by Cowan indicated a 1971 start-up of operations based on a current schedule.

54. The 1968 and 1969 Javelin Annual Reports to the stockholders reported the estimated cost of the project to be $140 million and $148 million respectively. In 1970, due to the government's desire to employ Newfoundland labor, Javelin abandoned its plan to contract the wood harvesting operation to outsiders. This resulted in an increase of $30 million in the budget, according to Mr. Rozzini. However, this possibility was anticipated in the original $140 million estimate of Javelin's. In addition, there was an increase of $7,000,000 in 1970 due to environmental factors but this also was taken into account in the earlier Javelin estimate. Mr. Rozzini admitted that by 1971, there was a $25,000,000 increase in the cost of the mill but he maintained that there were many areas which ran below estimated cost and which offset the increase. He gave examples of substantial savings on the wood processing plant and electrical equipment and he described the Javelin codes of accounts used to keep track of each budgeted item.

55. On June 29, 1971, Cowan certified that McAlpine had breached its performance obligations. McAlpine had been

bringing in equipment long before it was needed, resulting in excessive rental charges to Javelin. It had also failed to perform in other respects, giving rise to fears that the project might fall behind schedule.

56. In a letter dated November 2, 1971, Javelin notified McAlpine that it was terminated under the contract. McAlpine agreed to rerain on the job until a substitute contractor could be found. Javelin's attempts to substitute a new contractor failed because the government refused to guarantee payments to any substitute contractor. Javelin formally reinstated McAlpine within two weeks after termination. Although McAlpine's lack of performance caused a major cost overrun, this was compensated for by the fact that Cowan, as the sole interpreter of the contract, had deemed the equipment to be owned by Javelin because the rental payments to McAlpine had become equal to the market value of the equipment.

57. Mr. Rozzini and Mr. Golomb both testified that the project was always within the budget and that during 1971 neither the government nor its accountants ever claimed otherwise.

58. In early 1971, Javelin had exhausted its previous financing and needed more funds to continue the project. However, the government, then in control of the Liberal Party, was increasingly reluctant to provide guarantees to third parties for financing the project since such guarantees adversely affected the government's credit

and this practice was being publicly criticized by Conservative Party candidates. Javelin itself was increasingly coming under criticism from the Conservative Party candidates who were anxious to embarrass Premier Smallwood of the Liberal Party. Premier Smallwood was accused of permitting the Linerboard Project to become mismanaged and to greatly exceed the budget. In the middle of 1971, Javelin made three attempts to obtain financing from third parties with government guarantees. During the period July to October, 1971 when government guarantees were not forthcoming, Javelin sought to place additional pressure on the government. On November 23, 1971 it sent a Notice of Forefeiture calling for return of the preferred shares issued to the government, on the ground of failure to live up to the guarantee agreements. Shortly afterwards, in December, 1971, the government guaranteed a $30 million loan from a German bank. The Newfoundland government also loaned approximately $24 million directly to Javelin at various times in 1971 to continue the project.

59. During 1971, the government failed to issue timber leases to Javelin and to carry out its original understanding to supply electric power for the operation of the project. However, the government allowed Javelin wood cutting rights to enable continuation of the project, and the government failure with regard to the supply of electric power had no effect on the construction of the project since the government ultimately took the project prior to completion. The cost of electrical power at the time of the take over was not a significant factor in the overall cost or profitability of the project.

60. When the Progressive Conservative Party came to power in January, 1972, they assumed actual operating control of the project. In his political campaign, Premier Moores of the Conservative Party had indicated that his government might take over the project because of alleged mismanagement and other improprieties. This was well publicized in the press in the United States and Canada. In mid-January, 1972, there was a meeting between representatives of the new government and Javelin, at which time the government informed Javelin that it would take over the project by one of three ways- negotiation, litigation or legislation. Thereupon, negotiation began on the terms of the take over of the project by the government. However, while there were numerous reports in the newspapers as to the possible take-over by the government, Javelin did not publicly announce that the government was going to take over the project.

61. On March 3, 1972, the new government formally declared Javelin in default with respect to the project. Javelin's stock was suspended from trading on the American Stock Exchange and this suspension continued in effect until August 11, 1972.

62. Javelin and the government reached an agreement in principle on the terms of the take over of the project on March 29, 1972 and a final agreement was signed as of May 2, 1972. The details of the May 2 agreement were set forth in a letter to the stockholders dated May 31, 1972. Under said agreement, Javelin received from the government

substantial amounts of cash, the release of pledged assets, the return of its preferred shares and other benefits.

63. Golomb and Rozzini both testified that, at the time of the government take over, the project continued to be on schedule and within the original budgeted estimate made by Javelin.

(c) The Javelin claim against the Newfoundland government arising out of the takeover of the Linerboard Project.

64. In Javelin's 1972 Annual Report the amount of $4,263,405 was listed in the balance sheet as a current asset with the reference "Balance due-sale of linerboard project" while, in its 1973 Annual Report, Javelin reported said claim as a non-current asset. The evidence on the propriety of listing this claim as a current asset in the 1972 balance sheet was as follows:

65. Under the May, 1972 takeover agreements, the Newfoundland government was to repay Javelin for certain liabilities, advances and expenditures incurred by Javelin in connection with the Linerboard Project. Under the agreements, a six month audit was to be conducted by the government auditors, Peat Marwick & Mitchell, to determine whether the amounts involved were reasonable and necessary for the operations of the project. After the audit was completed, payment was to be made.

66. Mr. Golomb testified to the receipt of certain letters from the government following the completion of the of the six month audit provided for in the agreements. In

a letter dated November 6, 1972 with attached schedules, sent to Javelin by John C. Crosbie, Minister of Finance of the Newfoundland government, Mr. Crosbie stated that the government wanted to negotiate certain items and called for further documentation. He stated that the government wanted an "early settlement" of these matters.

67. Mr. Golomb further testified that while Javelin was in the process of attempting to substantiate said items, the RCMP, on December 15, 1972, seized a substantial number of documents which seriously impeded this effort. However,Javelin continued to supply the government with additional information.

68. On December 18, 1972, the government again wrote to inform Javelin that it had determined to make a payment of $4,000,000 but would retain a total amount of $4,268,921.98 subject to further negotiation. The letter read in pertinent part "the position now is that you have not satisfied us with respect to the amount of $4,152,032.77. You still have the opportunity to present to us further documentation or evidence that would satisfy as to all or any of this amount. (The difference between the $4,152,032.17 and $4,268,921.98 figures was an amount representing a "hold-back" of monies due Javelin on account of certain liabilities to be paid by Javelin that the government was not willing to assume).

69. Javelin responded by informing the government that it would continue to attempt to furnish further documentation and evidence. The government replied on

December 27, 1972 that it would entertain further submissions from Javelin.

70. Golomb testified that subsequently he wrote to the government to support a particular disputed item in the amount of approximately $1,000,000 and that while the RCMP raid had impeded the effort to substantiate the disputed items, Javelin personnel continued to submit documents and were engaging in discussions with the government involving numerous disputed items. He also testified that he had received an opinion of Canadian counsel that the government could be compelled to produce the seized documents for use in any arbitration proceeding.

71. In a letter dated March 26, 1973, the government responded to Golomb's earlier correspondence, and rejected Golomb's contention as to the disputed $1,000,000 item. The letter stated that the disputed item "is a matter for arbitration, unless we receive satisfactory evidence as requested on the real issue."

72. The 1972 financial statements were certified by Javelin's accountants on March 30, 1973. On June 22, 1973 Javelin gave written notice confirming an earlier oral notice of intent to arbitrate. A more formal Notice was given by its attorneys on December 31, 1973.

73. Golomb testified that Javelin's decision to report the claims against the government as a current asset was based upon the fact that it was continuing to submit documents and to negotiate the disputed items and the fact that the government had never refused to continue to

negotiate or make any final decision on the disputed items. Moreover, the said decision to treat the amount due as a current asset was made in consultation with independent auditors, in accordance with the auditors' and Javelin's view that a favorable resolution of the claims could be expected within twelve months.

74. In footnote 7 to the 1972 Annual Report, with reference to said amount, it was stated that:

> "Under this agreement, the sum of $6,600,000 has been paid and the company is claiming a further sum of $4,263,405 as expenditures and advances made by the company to its subsidiaries which management feels were reasonably necessary for the establishment of the project..... Failing agreement on the issue of reasonable necessity as to any item, the same is arbitrable under the Newfoundland Judicature Act. Payment as to any arbitrated items must be made one month after the decision of the arbitrators. In the event that any of these amounts are ultimately determined through arbitration or otherwise, not to be reasonably necessary for the establishment of the Project, such amounts will be deducted from the $4.2 million payable to the company."

75. Furthermore, the auditors qualified their certification of the Javelin financial statements as being "subject to the eventual determination of the balance to be received from the Government of Newfoundland, under the agreement as described in Notes 6(b) and 7...".

Evaluation of the Case

76. The extensive pre-trial discovery proceedings conducted by us resulted in a substantial clarification of the issues involved in the case and enabled us to make a

realistic estimate of the possibility of success in the action. Our evaluation of the strengths and weaknesses of our case follows:

The Merits

77. We first evaluated the evidence concerning the Panama Project as it affected our allegations of misrepresentation. Javelin contended that it was justified in issuing the press releases in 1971, and in June and July, 1973 indicating it had exploitation rights in connection with the Panama Project. To support its position, Javelin relied on the Panama law which was incorporated by reference in the exploration contracts and which gave a right of exploitation to the concessionary. It also relied on the fact that negotiations with the government had continued without a break and the fact that the government prior to August 22, 1973 never challenged its rights under Panamanian law. The evidence showed that the Panamanian law was amended without prior notice to Javelin on August 22, 1973. While a government official had publicly taken the position that the law had retroactive effect and therefore would affect Javelin's rights, the government nevertheless continued to conduct serious negotiations with Javelin and Javelin had two independent legal opinions confirming its exploitation rights. Moreover Javelin continued to negotiate seriously with British companies for the financing of the project and the marketing of the output which indicated that Javelin had no doubt that it would be able to commercially exploit the project.

78. Notwithstanding all of these arguments advanced by Javelin we felt that we might well show that Javelin

should not have stated its rights as unequivocally as it did, and should have used some cautionary language. The testimony indicated that there were many areas which were open concerning important elements of an exploitation agreement. We believed that the public was entitled to know that such items remained open so that potential investors could draw their own conclusions as to the possibility that major areas of disagreement might occur and that, despite Javelin's rights, an agreement might not be reached. This possibility did in fact occur thereafter. We recognized that a company need not and cannot attempt to anticipate all adverse contingencies. Nevertheless, we felt that we had a good possibility of success on this issue.

79. The evidence with respect to the availability of feasibility studies showed that Javelin had in fact conducted such studies and had properly described them in its public announcements. We had considerable doubt that we would prevail in attempting to prove otherwise in view of the language of the TEL report which had concluded that the project was economically viable. We recognized that it would be difficult to describe in a press release every possible qualification made in this preliminary report and we were persuaded that no misleading impression was given of the conclusion of the report. We considered it significant that the author of the report, Mr. Magyar, had approved the language used in describing the report. With respect to the existence of a commercial feasibility study, we had to consider the evidence that, in fact, the Wright Engineers study was completed in August and received in September. We

therefore doubted our ability to show that the releases in the summer of 1973 were misleading in stating in effect that such a report would soon be available.

80. In evaluating Javelin's statements about the Veraguas concession, it was obvious to us that the statement on July 5, 1973 about receiving the concession was premature. On the other hand, we could not ignore the fact that Javelin had received a government Resolution on June 21, 1973 certifying it met all the formal requirements in the Mining Code. According to the testimony, Javelin and its Panama attorneys believed the issuance of the concession was a formality since it had already received the said Resolution. The evidence indicated that the government simply changed its view about Javelin's compliance with the formal acreage requirement subsequent to the July 5, 1973 release and its reversal of position was completely unexpected. Accordingly, we did not believe that we would be able to show that Javelin knowingly or recklessly misrepresented that it had the Veraguas concession.

81. Another important aspect of our case involved the issue of whether Javelin had properly disclosed the status of its marketing arrangements for the Panama Project in its press releases of August 31, 1973, September 6, 1973 and September 19, 1973. It was clear from the testimony of Mr. Golomb that discussions had reached a serious point by the end of August, 1973. The press releases of August 31 and September 6 had indicated (supra. page 16) that Javelin was finalizing arrangements for the sale of the output and

had referred to letters of intent. While no letter of intent had been signed at the time of these releases, we had to consider the testimony that oral assurance of such letter had been given, and that a letter of intent had in fact been signed on September 11, 1973. We also recognized that the press release of September 19, 1973 had stated that the document which was signed was only a letter of intent not a contract and we were mindful of the fact that a BKM representative had approved the language of the release describing the agreement. We therefore concluded that we would have considerable difficulty in proving our contention that Javelin's press releases gave the misleading impression that all marketing arrangements were certain to be made in the near future or had in fact been made. However, on the other hand, it could well be argued that Javelin's failure to disclose that there was no assurance of a marketing agreement, or that difficulties in the Panama negotiations might delay or prevent such agreement made its announcements unduly favorable and therefore misleading. We concluded that there was a possibility of success on this issue.

82. We were considerably less sanguine about showing liability in connection with Javelin's Linerboard Project. While Javelin did not reveal the problems it was having with the Newfoundland government until May 31, 1973, there was substantial evidence which supported defendants contention that the project was within budget and on schedule notwithstanding the problems, and that these problems could not be considered significant. We had to consider also that while the government's failure to guarantee financing had

threatened to become serious, the government did lend $24 million to Javelin at various times in 1971 and also guaranteed a $30 million loan. Moreover, the charges of mismanagement of the project had received a tremendous amount of publicity in the media during the political campaign in Newfoundland. We recognized that in view of the political situation and Javelin's dependance on government aid, Javelin's decision not to speak out and in effect take sides between the contending political candidates could be considered a matter of business judgment made in the best interests of Javelin and its stockholders. Finally, in view of the trading records* which showed a rise in the price of the stock after trading resumed following disclosure of Javelin's problems with the government during the period 1971 until the take over of the project, it appeared that Javelin's position that the knowledge of these problems was not an important element in investment decisions was entitled to considerable weight.

83. With regard to our allegations that Javelin's claim against the government of Newfoundland arising out of the government's take over of the Linerboard Project was improperly reported in April, 1973 as a current asset, there was considerable evidence that negotiations with the government were continuing with respect to the disputed items and that the government had never finally rejected

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* At the time of the suspension of trading on March 3, 1972 the price of Javelin's stock was 7-1/2. When trading resumed on August 11, 1972, Javelin's stock closed at 10-3/8, and a week later, the price was 10-1/2.

Javelin's contentions. We recognized that the treatment of this claim as a current asset involved difficult questions of accounting practice and that Javelin's treatment of the asset was made in consultation with its independent accountants Furthermore, we had to take into account the fact that Javelin in a footnote to the financial statements and Javelin's accountants in their certification had called attention to the possibility that agreement on the disputed items would not be reached and that the claim would be submitted to arbitration. Nevertheless, Javelin had been on notice since December, 1972 that the government was disputing the claims, notwithstanding the fact that Javelin had been attempting since August, 1972 to substantiate its position. Moreover, the RCMP had seized many documents which Javelin needed to substantiate its claims, which cast doubt upon Javelin's ability to resolve the dispute short of arbitration. Thus it was our belief that we had a good chance of success on this aspect of the allegations we made in connection with the Linerboard Project, but we recognized that there would be considerable difficulty in showing that the price of the market was affected to any large degree by the incorrect description of this asset in the April, 1973 report particularly in view of Javelin's reports concerning the Panama Project, beginning in June, 1973.

84. With regard to our claim under Section 5 of the Securities Act that Javelin sold unregistered securities to the public, our pre-trial investigation did not disclose any public offerings made by Javelin during the period of the statute of limitations which applied to this action. We therefore concluded that we would be unable to prove liability based upon a violation of Section 5.

85. To recapitulate, in evaluating the likelihood that we would be able to prevail on the merits, we estimated that we had a fairly good possibility of success with respect to the allegations concerning Javelin's rights to exploit the Panama Project and its marketing arrangements. However, we had serious doubts about our ability to succeed with respect to our allegations concerning feasibility studies in connection with the Panama Project, the Veraguas concession, the Linerboard Project and the sale of unregistered securities.

Damages

86. In addition to question of liabillity, we also had to try to evaluate the possible damages in order to determine whether the proposed settlement was fair. We had to evaluate the effect of Javelin's non-disclosures and statements on the market price of Javelin stock in order to determine whether the market price was inflated and if so, to what extent. This was necessary to support our claim that the class made purchases of Javelin stock at prices which were inflated by defendants' conduct.

87. The evidence indicated that Javelin's difficulties with the Newfoundland government had begun during the political controversies surrounding the government elections held in October, 1971 and January, 1972 which resulted in the Conservative Party coming to power. One of the major election issues was the government's handling of the Linerboard Project. Mr. Golomb testified that, as a result, charges of mismanagement and cost overruns were widely publicized in the media. This was confirmed by our review of the newspaper articles appearing during this period.

Therefore, it could well be argued that the price of Javelin stock during the relevant period substantially reflected all adverse information, notwithstanding the fact that Javelin itself had made no disclosure.* It also appeared significant that after Javelin disclosed certain problems with the government in connection with the Linerboard Project in a May 31, 1972 letter to its stockholders, the price of Javelin stock on August 11, 1972, the first day of trading on the American Stock Exchange after the suspension of trading in March, 1972, was actually higher than the price of the stock when the suspension began.

88. During the period of the Panama Project, and particularly the period subsequent to June 22, 1973 (a period during which we felt our chances of showing violations of the federal securities laws were greatest) the price of Javelin stock rose from 7-1/2 to 15,** and trading was relatively heavy.

89. During the course of settlement negotiations, defendants had stated that the damages for the entire period covered by our complaint were no greater than $2,500,000. We told them that no settlement could be finalized unless

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* The price of Javelin stock had steadily declined during the second half of 1971 from a high of over 14 to a low of 10-1/8 by December 31, 1971. After the government publicly announced that it intended to take over the Linerboard Project, which occurred on January 27, 1972, the price further declined to 7-1/2 at the time of the March suspension of trading.

** The day before trading was suspended on October 25, 1973, the price was 15. On January 27, 1973, the first day of trading after the issuance of a letter by Javelin to its stockholders fully describing its Cerro Colorado activities, which letter had been reviewed by the Compliance Committee set up under the consent judgment in the Commission action, the price of Javelin's stock was 7-1/8.

we received the op nion of an expert whose qualifications we were prepared t) recognize as to what the potential damages were. Defendants obtained and made available to us an opinion of Dr. Roger F. Murray, S. Colt Sloan Professor of Banking and Finance at the Graduate School of Business, Columbia University, whose qualifications were outstanding, which opinion supported the defendants' estimates as to damages. Upon the condition that Dr. Murray would submit an affidavit embodying his opinion to the court in connection with any settlement proceedings, we agreed to the settlement now before the Court.

The Settlement

90. As discovery proceedings had progressed, the attorneys for the parties had from time to time discussed the possibility of working out some settlement and compromise of the case. However, all of the proposals which were discussed were tentative and made with the understanding that it would be impossible to reach any definite conclusions with regard to settlement of this case until all of the discovery proceedings were completed.

91. At the conclusion of our pre-trial discovery, we were able to assess the strengths and weaknesses of our case. We were aware that the outcome of litigation is always uncertain, and that we could not assume with certainty that we would establish liability. We believed,however, as I have stated, that we had a reasonably good chance to succeed with respect to certain aspects of the claims made with respect to the Panama Project. While we were much less confident with

respect to our claims with respect to the Linerboard Project, even there we considered that there was some merit to our position. Defendants, of course, vigorously disputed all allegations of wrongdoing and asserted the existence of material facts from which a trier of facts might well conclude that defendants did not misrepresent or omit to state any facts which were material in connection with the two project.

92. We were aware that the determination of damages during the period complained of was an area in which there could be a difference of opinion, but the analysis of Dr. Murray had to be given weight.

93. With this as background, after considerable hard bargaining between the parties, it was agreed, subject to the approval of the Court, to settle the action on the following basis:

94. The defendants are to pay the sum of $1,350,000 into a settlement fund, two-thirds to be allocated to the claims of persons who purchased during the period of the Panama Project and one-third to be allocated to the claims of persons who purchased during the period of the Linerboard Project. The payment of this sum may be divided among defendants in such proportions as they determine among themselves. The allocation of the fund between the two classes was based upon our view of the strengths of the claims of each class, and the difficulties of showing damages, and the extent of potential damage.

95. While the settlement provided that warrants, stock or cash, or any combination could be used to pay the

settlement, at the option of defendants, it was our firm opinion that defendants would have to pay cash, since we had provided in the settlement that the value of the Javelin stock or warrants would have to be determined by an expert chosen by the plaintiffs, and no such value could be arrived at in view of the continued suspension of the trading in Javelin stock.

96. In view of all of the foregoing, considering the benefits achieved, and the inevitable uncertainty of litigation, plaintiffs and their attorneys have concluded that the proposed settlement is fair, adequate and proper, and should be recommended to the Court for its approval.

97. I respectfully request that the Stipulation of Settlement which has been presented to the Court be approved and that judgment be entered in appropriate form pursuant to its provisions.

Benedict Wolf
BENEDICT WOLF

Sworn to before me this
8th day of October, 1975

Maryann M. Falls
NOTARY PUBLIC

MARYANN M. FALLS
Notary Public, State of New York
No. 01-A452 798
Qualified in Westchester County
Commission Expires March 30, 1976

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GILL WALKER being duly sworn, deposes and says that s he is employed by WOLF POPPER ROSS WOLF & JONES, the attorneys for the above named Plaintiffs

herein. That on the 7th day of October, , 19 75
s he served the within Affidavit

upon Diamond & Golomb, P.C., and Steptoe & Johnson, attorneys for defendant Canadian Javelin Limited, Moses Krislov, and Martin Ozer, attorneys for defendants John C. Doyle and William M. Wismer

the attorneys for the above named defendants

by depositing a true copy of the same, securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 845 Third Avenue, New York, New York, 10022, directed to said attorneys for the parties above named at 99 Park Avenue, N.Y.,N.Y. 10016, 1250 Connecticut Avenue, N.W., Washington, D.C. 20036, 800 Engineers Building, Cleveland, Ohio 33114 and 475 Fifth Avenue, New York,New York 10017

those being respectively the addresses within the State designated by them for that purpose upon the preceding papers in this action, or the place where they then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of twenty-one years.

Gill Walker
GILL WALKER

Sworn to before me this 7th day of October , 19 75

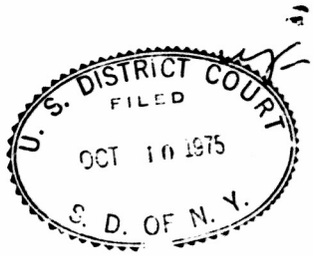
Maryann M. Falls
Notary Public

MARYANN M. FALLS
Notary Public, State of New York
No. 01FA4521798
Qualified in Westchester County
Commission Expires March 30, 1976

AFFIDAVIT OF P.J. DE SANTIS DATED OCTOBER 8, 1975
AND EXHIBITS THERETO (Pages A135-A151)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK



GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs, vs. JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN LIMITED, Defendants.	73 Civ. 5117 (MEL) AFFIDAVIT OF P. J. DeSANTIS

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) ss:

COMES NOW P.J. DeSANTIS, being first duly sworn, deposes and says:

1. I am Treasurer of Canadian Javelin Limited ("CJV" or the "company"), defendant in the above-entitled action. I have supervised the sending of the following notices and forms to the members of the class.

2. On August 14, 1975, I caused to be mailed at the Central Post Office located at St. James and Peel Streets, Montreal, Canada, enclosed in envelopes with first class postage thereon prepaid, A Notice of a Class Action Determination, of a Proposed Class Action Settlement and Hearing Thereon, and Requirements for Filing Proofs of Claim, a copy of which is attached hereto as Exhibit 1, and a Verified Proof of Claim and Release form, a copy of which is attached hereto as Exhibit 2, addressed to all purchasers of CJV stock between April 30, 1969 and October 24, 1973, inclusive, shown on the shareholder records of the company.

3. On August 22, 1975, I caused to be mailed at the same place, by the same means, and to the same addressees as in the previous paragraph a letter correcting a typographical error in

the Verified Proof of Claim and Release form, a copy of which is attached as Exhibit 3.

4. I caused the notices and proof of claim forms to be printed in the New York Times on August 25, 1975; in the eastern, midwest and southwest editions of the Wall Street Journal on August 25, 1975, and in the Pacific coast edition on August 27, 1975; and in the national edition of the Toronto Globe and Mail on September 6, 1975. The affidavits of printing of the advertising clerks of the respective newspapers are attached as Exhibit 4.

P. J. DeSANTIS

Subscribed and sworn to before me this 29 day of October, 1975.

Notary Public, D. C.

My Commission Expires March 15, 1977

TO: ALL PERSONS WHO PURCHASED COMMON STOCK OF CANADIAN JAVELIN LIMITED BETWEEN APRIL 30, 1969 AND OCTOBER 25, 1973, INCLUSIVE.

NOTICE OF A CLASS ACTION DETERMINATION, OF A PROPOSED CLASS ACTION SETTLEMENT AND HEARING THEREON, AND REQUIREMENTS FOR FILING PROOFS OF CLAIM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

— against —

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

73 Civ. 5117 (MEL)

CLASS ACTION

THIS NOTICE IS GIVEN PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND AN ORDER OF THE ABOVE-NAMED COURT FILED JULY 9, 1975

1. THE NATURE OF THE ACTION

The above-entitled action was commenced on December 3, 1973, by plaintiff Bonime, and on December 11, 1974 plaintiff Olden was added as a party plaintiff. The action was prosecuted on behalf of plaintiffs and all other persons similarly situated who bought Canadian Javelin Limited ("Javelin") stock during the period from April 30, 1969 through October 25, 1973, inclusive.

The amended complaint ("Complaint") charged that defendant Javelin and the individual defendants, two of its principal officers, took certain actions in violation of the federal securities laws with the object of inflating the price of Canadian Javelin stock during the period commencing early in 1969 and continuing through October, 1973.

The Complaint charged that Javelin issued various releases and financial statements concerning Javelin's activities in connection with its project to manufacture linerboard in the Province of Newfoundland, Canada (the "Linerboard Project") and a project to exploit mineral resources in the Republic of Panama, which releases and financial statements allegedly contained untrue statements of fact and omitted material facts.

Specifically with regard to the Linerboard Project, the Complaint alleged that Javelin made statements that production would start in 1971 and that the mill would be the largest and most up-to-date in the world, but Javelin allegedly did not truly reveal the size, the anticipated profitability and commercial feasibility of the project, the production quality or quantity, the cost of the project as compared to cost projections, the financing needed for the project, the extent of the financial support from the Newfoundland government, certain serious disputes with that government concerning the project, and difficulties it was having in obtaining financing.

In or about May, 1972 the Newfoundland government agreed to purchase the Linerboard Project from Javelin. The Complaint went on to allege that Javelin reported in April, 1973 a current asset of $4.3 million dollars as due from that government, but failed to reveal that the government had not acknowledged this claim, nor had Javelin taken the necessary steps to establish this claim.

The Complaint alleged further that the defendants gave the public, by press releases and reports, the false and misleading impression that Javelin had the right to exploit a large copper discovery in Panama, that it had made commercial feasibility studies concerning the copper project, that it had made financial arrangements to begin mining and production, and that it had a favorable arrangement to sell the entire initial output of this project. It is alleged that Javelin failed to disclose publicly that its right to exploit the ore was highly speculative, that neither a final commercial feasibility study nor financial arrangements for mining and production existed and that Javelin was still negotiating for the sale of all or part of the output of the project.

As a result of all these statements and omissions, according to the Complaint, the defendants artificially inflated Javelin's common stock during the 1969-1973 period, and the purchasers of Javelin stock in that period, if they had known the facts about Javelin, would not have bought the stock at the prices they paid which it is alleged were above the fair market value of the stock. The plaintiffs claimed that they and all others similarly situated were damaged because of the wrongful acts set forth in the Complaint which violated the securities laws and the common law, and they asked for judgment against the defendants, for themselves and all other persons similarly situated, in the amount of damages they sustained.

FURTHER PROCEEDINGS

The defendants appeared and filed their answers, in which they denied all charges of wrongdoing which plaintiffs had made in the Complaint, and specifically denied that any releases or reports issued or filed by Javelin were false or misleading.

On February 10, 1975, the Court issued an order allowing this action to be maintained as a class action pursuant to the provisions of Rule 23(c)(1) of the Federal Rules of Civil Procedure, on behalf of all purchasers of Javelin's common stock during the period April 30, 1969 through October 25, 1973, other than the defendants.

Meanwhile, plaintiffs' attorneys had been conducting extensive pre-trial discovery proceedings, including the examination of numerous documents, securing answers to written interrogatories, and examining witnesses under oath.

On July 9, 1975 to avoid further litigation and expense, the defendants agreed to settle this case as a class action, subject to the approval of the Court and notice to the class. Plaintiffs, for their part, accepted and approved the proposed settlement, recognizing, *inter alia*, that the complexity of the issues, involving as they do, relations between Javelin and the Newfoundland Government and between Javelin and the Republic of Panama, would protract and add to the expense of further prosecution, and that the eventual outcome of trial and appeal of this strongly contested litigation is uncertain.

THE CLASS

The settlement agreement establishes as the class covered by it all persons who bought the common stock of Javelin during the period from April 30, 1969 through May 31, 1972 (First Class Period) or during the period from June 1, 1972 through October 24, 1973 (Second Class Period), and their heirs, successors by operation of law and their legal representatives, but excluding any person who was a director, officer or employee of Javelin at any time during the period from April 30, 1969 through October 24, 1973 and their successors or assigns and their family members or any trust in which they are trustor, trustee or beneficiary, or any person who had access to information not publicly available concerning the Linerboard Project, the amount which was claimed by Javelin from the Newfoundland government or the project to exploit mineral resources in Panama, as well as any person who requests exclusion from the class in accordance with the procedures of Rule 23 of the Federal Rules of Civil Procedure.

THE SETTLEMENT

The terms of the settlement are set forth in the Stipulation of Settlement dated July 9, 1975, between the plaintiffs and the defendants. The following is a brief summary of its terms.

The defendants agree to pay into a settlement fund (the "Fund") the sum of $1,350,000.00. They will agree among themselves what portion of this sum each will pay. The payment of Javelin will be

announced prior to the issuance of this notice to the members of the class, and will be at its option either in cash, stock or warrants or a combination of cash, stock and/or warrants.

The warrants are to be ten-year warrants each entitling the holder to purchase one-half share of Javelin stock at the market price (as defined in the Stipulation), this market price to be the average of the closing prices of Javelin stock on the American Stock Exchange during a fixed period prior to the date of the settlement hearing referred to below. Javelin is to take the necessary steps to get the warrants listed on the American Stock Exchange or, in the event such listing is rejected, on the Montreal Stock Exchange, and to get the underlying stock registered. If the stock is not registered within a fixed period of time, each four warrants will be convertible into a share of Javelin common stock. The value of each warrant will be determined by an expert to be designated by plaintiffs' attorneys.

Every class member who has sustained a loss from the sale of Javelin stock purchased during the period from April 30, 1969 through October 24, 1973, in excess of profits made on the sale of Javelin stock purchased during the said period will be entitled to a proportionate share of the Fund on the filing of proper Proofs of Claim. One third of the Fund will be allocated to those who purchased stock in the First Class Period and two thirds to those who purchased in the Second Class Period.

HEARING ON APPROVAL OF THE SETTLEMENT

YOU ARE HEREBY NOTIFIED that a Hearing will be held on October 17th, 1975 at 9:30 A.M., before Honorable Morris E. Lasker, Judge of the United States District Court for the Southern District of New York, in Room No. 618, United States Courthouse, Foley Square, New York, N.Y., pursuant to an Order of this Court dated July 9, 1975 to determine whether the proposed settlement of the above-entitled class action litigation should be approved by the Court as fair, reasonable and adequate and whether said action should be dismissed on the merits and with prejudice as to the defendants.

If you are a member of the Class described above, your rights will be affected by these proceedings. At the Hearing any member of the Class may appear and show cause, if any he has, why the proposed settlement should not be approved as fair, reasonable and adequate and why this litigation should not be dismissed on the merits with prejudice, provided that no such person shall be heard and no papers or briefs shall be submitted to the Court, except by special permission of the Court, unless on or before September 29th, 1975, notice of intention to appear and a statement of the basis for objections, together with a memorandum of supportive authorities, are filed with the Court and mailed first class no later than September 26th, 1975, to Wolf Popper Ross Wolf & Jones, Esqs., 845 Third Avenue, New York, New York 10022, attorneys for the plaintiffs; Diamond & Golomb, P.C., 99 Park Avenue, New York, New York 10016, attorneys for defendant Canadian Javelin Limited, and Moses Krislov, Esq., 800 Engineers Building, Cleveland, Ohio 33114, attorney for the individual defendants.

PARTICIPATION IN THE FUND AND REQUIREMENTS OF FILING A PROOF OF CLAIM

Javelin has exercised its option as to the form of its payment into the Fund, by agreeing that it and the individual defendants will pay the total amount of settlement, $1,350,000, in cash.

In order to receive the proportionate share of the Fund to which you may be entitled, you are required to complete and file no later than January 16, 1976, a Proof of Claim on the form approved by the Court, set forth below, together with broker's confirmations or monthly accounts relative to all purchases of Javelin common stock during the class periods and sales of such Javelin common stock, if such documents are in your possession or under your control. Any class member who does not timely file the Proof of Claim will not be permitted to share in the settlement.

Upon acceptance of your Proof of Claim and receipt of your distributive share of the Fund, you will thereby release the defendants, their predecessors, successors, heirs, assigns, officers, directors, partners, former partners, employees and attorneys of all claims and demands arising from or relating to the matters alleged in the amended complaint, or arising from or relating to the consummation of the terms of the Stipulation of Settlement. **If you are a member of the Class and neither exclude yourself from the class in the manner provided below nor file a timely and proper Proof of Claim you will be forever barred from any recovery from the defendants with respect to the claims which are or which could have been asserted in this litigation.**

The Stipulation of Settlement sets forth the method of review of Proofs of Claim, with final determination, in the event of rejection of claim, to be made by the Court or by a Master appointed by the Court.

REQUEST FOR EXCLUSION

If you desire to be excluded from the class and the settlement, you must write to:

Clerk
United States District Court
U.S. Courthouse
Foley Square
New York, New York 10007

setting forth your name and address, the number of shares you purchased in the period from April 30, 1969 through October 24, 1973, the dates of such purchases and the prices paid, the number of shares you sold during said period, the dates of such sales and the prices received, and your request to be excluded. Your request for exclusion must be received on or before October 7th, 1975. Any Class member who elects to be excluded from the Class and the settlement remains free to pursue, at such Class member's own cost, whatever legal rights such Class member may have.

If you do not elect to be excluded, you may enter an appearance through your own counsel if you desire, and participate in the settlement through such counsel. If you do not request exclusion, and do not enter an appearance through your own counsel your interests in the litigation will be represented by the attorneys for the plaintiffs and the Class, Wolf Popper Ross Wolf & Jones.

ATTORNEYS' FEES, COSTS

If the settlement is approved, the attorneys for plaintiffs will apply for reimbursement of their out-of-pocket expenses and for $260,000 as fees. The Court will determine the amount of fees to be allowed. Payment of fees and expenses will be made from the Fund. All expenses of administration in consummating the settlement will be borne by Javelin.

OTHER LITIGATION

After this action was commenced, two stockholders started an action in the Federal District Court in Chicago (**Faye Lurie, et ano.** v. **Canadian Javelin Limited, et al.**, 73 C 3086) based generally on the same issues as are involved in this action, which case has remained dormant, and another action in the Circuit Court of Cook County, Illinois (**Faye Lurie, et ano.** v. **Canadian Javelin Limited, et al.**, 73 CH 7442) also based generally on the same issues as are involved in this case. In the latter action plaintiffs moved for a class action determination under Illinois Rules and for partial summary judgment and defendants cross-moved for complete summary judgment. The class action motion has been pending since July 12, 1974 and plaintiffs' partial summary judgment motion has been pending since December 17, 1974, both without determination.

EXAMINATION OF PAPERS

The foregoing references to the pleadings, the settlement agreement and other documents are only summaries thereof. For a complete and detailed description of all the terms, conditions and provisions of the settlement agreement, the form of the warrant to be issued, the pleadings and other pertinent papers, reference is made to the underlying documents, the complete texts of which are on file with the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York under the file number set forth above, where they are available for inspection and copying during regular Court business days.

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Dated: New York, N.Y.
July 9, 1975

S/ MORRIS E. LASKER

MORRIS E. LASKER
Judge

VERIFIED PROOF OF CLAIM AND RELEASE

Pursuant to court order, in order to receive any payments in the below litigation, you must file this Proof of Claim on or before January 16, 1976. If you fail to file by that date, your claim will be subject to rejection and you may be precluded from receiving any money in the settlement of this class action.

Mail your claim promptly to:

Clerk of the United States District
Court, Southern District of New York
(Re: Bonime v. Doyle, et al., 73 Civ.
5117 (MEL)
United States Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs.	73 Civ. 5117 (MEL)
— against —	CLASS ACTION
JOHN C. DOYLE, WILLIAM M. WISMER, and CANADIAN JAVELIN LIMITED. Defendants.	

_____, being duly sworn, deposes and says:
(Insert Name)

I. **IDENTITY OF CLAIMANT:** (Fill in appropriate space in only one of the following paragraphs, either A, B, C, D, or E).

A. INDIVIDUAL OR JOINT OWNERSHIP:

My (our) name(s) is (are) .....

and my (our) address is .....

B. CORPORATION:

I am the ..... of .....

Title

NAME OF CORPORATION

I am authorized to make this claim on behalf of the corporation.

C. PARTNERSHIP:

I am a member of .....

a co-partnership; our business address is .....

I am authorized to make this claim on behalf of the partnership.

D. EXECUTORS OR ADMINISTRATORS:

I am (we are) .....

the executor(s) administrator(s) of the Estate of .....

, deceased, and my (our) mailing

address is .....

E. OTHERS:

(Give full particulars: name, address, on whose behalf you are acting, capacity etc.).

.....

II. PURCHASES OF CANADIAN JAVELIN LIMITED COMMON STOCK BETWEEN APRIL 30, 1969 AND OCTOBER 24, 1975, INCLUSIVE

A. With Respect To Each Purchase, State In Chronological Order In The Schedule Below:

1. Date(s) of Purchase	2. No. of Shs. Purchased	3. Purchase Price Per Share	4. Tot. price pd. excluding commission	5. If sold, date(s) of sale	6. No. of Shares Sold	7. Selling Price per Share	8. Net Sale Price excluding commission	9. Profit or Loss (dif. bet. Column 4 & 8)
COMMON STOCK								

I am enclosing to the extent available the original or facsimile of the broker's confirmations, monthly accounts or other documents evidencing my status and in support of my claim. (If any such documents are not in your possession, please indicate below the name and address where such documents can be obtained).

III. SUBMISSION TO JURISDICTION OF COURT AND RELEASE OF DEFENDANTS

Claimant submits this Proof of Claim under the terms of the Stipulation of Settlement dated July 9, 1975, and claimant submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to his claim and agrees to be bound by and subject to the terms of any judgment that shall be entered upon the Stipulation of Settlement. Claimant understands that the information contained in this Proof of Claim may be subject to further investigation and discovery under the Federal Rules of Civil Procedure and claimant agrees to furnish additional information to support this claim if required to do so.

In consideration of participating in the settlement claimant does by these presents for himself, his heirs, executors, administrators, successors and assigns, remise, release and forever discharge defendant Canadian Javelin Limited and its past and present officers, directors, employees, agents, attorneys, subsidiaries and affiliates and defendants John C. Doyle and William M. Wismer, and their heirs, representatives, agents, attorneys and successors, from all claims which have been asserted in the action, and all claims and causes of action which might have been asserted in connection with, or which arise out of, any of the matters alleged in the action, whether known or unknown.

Signed by .....

STATE OF)
: ss.
COUNTY OF)

On this day of , 1975, before me personally appeared

.....

known to me to be the person who executed the within instrument and subscribed to and swore to the truth of said instrument before me and acknowledged to me that (s)he executed the same.

.....
NOTARY PUBLIC

Printed in Cana

TEL.(514) 842 5831

TELEX 05 24316

Canadian Javelin Limited

EXECUTIVE OFFICES

1115 Sherbrooke St. West

Suite 2900

Montreal, Quebec

H3A 1H5

August 21, 1975

Class Members:

Re: Bonime, et ano. v. Canadian Javelin Limited, et al., 73 Civ. 5117 (MEL)

Materials relating to the above litigation were recently mailed to you pursuant to order of the United States District Court for the Southern District of New York. Those materials included a four-page form entitled "VERIFIED PROOF OF CLAIM AND RELEASE". On page 3 of that form there was a typographical error in the heading of part II of the form. The date "October 24, 1973" was erroneously printed as "October 24, 1975". The heading of part II should read:

II. PURCHASE OF CANADIAN JAVELIN LIMITED COMMON STOCK BETWEEN APRIL 30, 1969 AND OCTOBER 24, 1973, INCLUSIVE

Accordingly, you should give the information requested in part II of the form only with respect to your purchases of Canadian Javelin stock between April 30, 1969 and October 24, 1973, inclusive. No information should be furnished with respect to purchases made after October 24, 1973.

Very truly yours,

CANADIAN JAVELIN LIMITED

Julius Mallin
Secretary

A145

STATE OF NEW YORK
CITY AND COUNTY OF NEW YORK

being duly sworn, states that he is Advertising Clerk of the Publisher of THE WALL STREET JOURNAL, a daily newspaper published and of general circulation in the City and County of New York in the City of Chicago, Cook County, Illinois, in the City of Palo Alto, Santa Clara County, California, and in the City and County of Dallas, Texas and that the Notice of which the annexed is a copy has been regularly published in the said THE WALL STREET JOURNAL in each of the above editions

insertion

in the year [illegible]

Sworn to before me this

[illegible] day of

MICHAEL F. SHEEHAN
Notary Public, State of New York
No. 43-4510532, Queens County
Commission Expires March 30, 1977

TO: ALL PERSONS WHO PURCHASED COMMON STOCK OF CANADIAN JAVELIN LIMITED BETWEEN APRIL 30, 1969 OCTOBER 25, 1973, INCLUSIVE

NOTICE OF A CLASS ACTION DETERMINATION, OF A PROPOSED CLASS ACTION SETTLEMENT AND HEARING THEREON, AND REQUIREMENTS FOR FILING PROOFS OF CLAIM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs,
—against—
JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED, Defendants.

73 Civ. 5117 (MEL)

CLASS ACTION

THIS NOTICE IS GIVEN PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND AN ORDER OF THE ABOVE-NAMED COURT FILED JULY 9, 1975

I. THE NATURE OF THE ACTION

The above-entitled action was commenced on December 2, 1973, by plaintiff Bonime and on December 11, 1974 plaintiff Olden was added as a party plaintiff. The action was prosecuted on behalf of plaintiffs and all other persons similarly situated who bought Canadian Javelin Limited ("Javelin") stock during the period from April 30, 1969 through October 25, 1973, inclusive.

The amended complaint ("Complaint") charged that defendant Javelin and the individual defendants, two of its principal officers, took certain actions in violation of the federal securities laws with the object of inflating the price of Canadian Javelin stock during the period commencing early in 1969 and continuing through October, 1973.

The Complaint alleged that Javelin issued various releases and financial statements concerning Javelin's activities in connection with its project to manufacture linerboard in the Province of Newfoundland, Canada (the "Linerboard Project") and a project to exploit mineral resources in the Republic of Panama, which releases and financial statements allegedly contained untrue statements of fact and omitted material facts.

Specifically with regard to the Linerboard Project, the Complaint alleged that Javelin made statements that production would start in 1971 and that the mill would be the largest and most up-to-date in its world, but Javelin allegedly did not truly reveal the size, the anticipated profitability and commercial feasibility of the project, the production quality or quantity, the cost of the project as compared to cost projections, the financing needed for the project, the extent of the financial support from the Newfoundland government, certain serious disputes with that government concerning the project, and difficulties it was having in obtaining financing.

In or about May, 1973 the Newfoundland government agreed to purchase the Linerboard Project from Javelin. The Complaint went on to allege that Javelin reported in April, 1973 a current asset of $6.3 million dollars as due from that government, but failed to reveal that the government had not acknowledged this claim, nor had Javelin taken the necessary steps to establish this claim.

The Complaint alleged further that the defendants gave the public, by press releases and reports, the false and misleading impression that Javelin had the right to exploit a large copper discovery in Panama, that it had made commercial feasibility studies concerning the copper project, that it had made financial arrangements to begin mining and production, and that it had a favorable arrangement to sell the entire initial output of this project. It is alleged that Javelin failed to disclose publicly that its right to exploit the ore was highly speculative, that neither a final commercial feasibility study nor financial arrangements for mining and production existed and that Javelin was still negotiating for the sale of all or part of the output of the project.

As a result of all these statements and omissions, according to the Complaint, the defendants artificially inflated Javelin's common stock during the 1969-1973 period, and the purchasers of Javelin stock in that period, if they had known the facts about Javelin, would not have bought the stock at the prices they paid which it is alleged were above the fair market value of the stock. The plaintiffs claimed that they and all others similarly situated were damaged because of the wrongful acts set forth in the Complaint which violated the securities laws and the common law, and they asked for judgment against the defendants, for themselves and all other persons similarly situated, in the amount of damages they sustained.

FURTHER PROCEEDINGS

The defendants appeared and filed their answers, in which they denied all charges of wrongdoing which plaintiffs had made in the Complaint, and specifically denied that any releases or reports issued or filed by Javelin were false or misleading.

On February 10, 1975 the Court issued an order allowing this action to be maintained as a class action pursuant to the provisions of Rule 23(c) (1) of the Federal Rules of Civil Procedure, on behalf of all purchasers of Javelin's common stock during the period April 30, 1969 through October 25, 1973, other than the defendants.

Meanwhile, plaintiffs' attorneys had been conducting extensive pre-trial discovery proceedings, including the examination of numerous documents, securing answers to written interrogatories, and examining witnesses under oath.

On July 9, 1975 to avoid further litigation and expense, the defendants agreed to settle this case as a class action, subject to the approval of the Court and notice to the class. Plaintiffs, for their part, accepted and approved the proposed settlement, recognizing, inter alia, that the complexity of the issues, involving as they do, relations between Javelin and the Newfoundland Government and between Javelin and the Republic of Panama, would protract and add to the expense of further prosecution, and that the eventual outcome of trial and appeal of this strongly contested litigation is uncertain.

THE CLASS

The settlement agreement establishes as the class covered by it all persons who bought the common stock of Javelin during the period from April 30, 1969 through May 31, 1972 (First Class Period) or during the period from June 1, 1972 through October 24, 1973 (Second Class Period), and their heirs, successors by operation of law and their legal representatives, but excluding any person who was a director, officer or employee of Javelin, at any time during the period from April 30, 1969 through October 24, 1973 and their successors or assigns and their family members or any trust in which they are trustor, trustee or beneficiary, or any person who had access to information not publicly available concerning the Linerboard Project, the amount of which was claimed by Javelin from the Newfoundland government or the project to exploit mineral resources in Panama, as well as any person who requests exclusion from the class in accordance with the procedures of Rule 23 of the Federal Rules of Civil Procedure.

THE SETTLEMENT

The terms of the settlement are set forth in the Stipulation of Settlement dated July 9, 1975, between the plaintiffs and the defendants. The following is a brief summary of its terms.

The defendants agree to pay into a settlement fund (the "Fund") the sum of $1,350,000. They will agree among themselves what portion of this sum each will pay. The payment of Javelin will be announced prior to the issuance of this notice to the members of the class, and will be at its option either in cash, stock or warrants of a combination of cash, stock and/or warrants.

The warrants are to be ten-year warrants each entitling the holder to purchase one-half share of Javelin stock at the market price (as defined in the Stipulation), this market price to be the average of the closing prices of Javelin stock on the American Stock Exchange during a fixed period prior to the date of the settlement hearing referred to below. Javelin is to take the necessary steps to get the warrants listed on the American Stock Exchange or, in the event such listing is rejected, on the Montreal Stock Exchange, and to get the underlying stock registered. If the stock is not registered within a fixed period of time, each four warrants will be convertible into a share of Javelin common stock. The value of each warrant will be determined by an expert to be designated by plaintiffs' attorneys.

Every class member who has sustained a loss from the sale of Javelin stock purchased during the period from April 30, 196_ through October 24, 1973, in excess of profits made on the sale of Javelin stock purchased during the said period will be entitled to a proportionate share of the Fund on the filing of proper Proofs of Claim. One third of the Fund will be allocated to those who purchased stock in the First Class Period and two thirds to those who purchased in the Second Class Period.

HEARING ON APPROVAL OF THE SETTLEMENT

YOU ARE HEREBY NOTIFIED that a Hearing will be held on October 17th, 1975 at 9:30 A.M. before Honorable Morris E. Lasker, Judge of the United States District Court for the Southern District of New York, in Room No. 618, United States Courthouse, Foley Square, New York, N.Y. pursuant to an Order of this Court dated July 9th, 1975 to determine whether the proposed settlement of the above-entitled class action litigation should be approved by the Court as fair, reasonable and adequate and whether said action should be dismissed on the merits and with prejudice as to the defendants.

If you are a member of the Class described above, your rights will be affected by these proceedings. At the Hearing any objection of the Class may appear and show cause, if any he has, why the proposed settlement should not be approved as fair, reasonable and adequate and why this litigation should not be dismissed on the merits with prejudice, provided that no such person shall object unless he filed and has papers or briefs shall be filed with the Court, except by special permission of the Court, unless on or before September 29th, 1975 notice of intention to appear and a statement of his reasons for objections, together with a memorandum of supportive authorities, are filed with the Court and mailed first class no later than September 26th, 1975, to Wolf Popper Ross Wolf & Jones, Esqs., 845 Third Avenue, New York, New York 10022, attorneys for the plaintiffs, Diamond & Golomb, Esqs., 99 Park Avenue, New York, New York 10016, attorneys for defendant Canadian Javelin Limited, and Moses Krislov, Esq., 800 Engineers Building, Cleveland, Ohio 44114, attorney for the individual defendants.

PARTICIPATION IN THE FUND AND REQUIREMENTS OF FILING A PROOF OF CLAIM

Javelin has exercised its option as to the form of its payment into the Fund, by agreeing that it and the individual defendants will pay the total amount of settlement, $1,350,000 in cash.

In order to receive the proportionate share of the Fund to which you may be entitled, you are required to complete and file no later than January 16, 1976, a Proof of Claim on the form approved by the Court, set forth below, together with brokers confirmations or monthly accounts relative to all purchases of Javelin common stock during the class periods and sales of such Javelin common stock, if such documents are in your possession or under your control. Any class member who does not timely file the Proof of Claim will not be permitted to share in the settlement.

Upon acceptance of your Proof of Claim and receipt of your distributive share of the Fund, you will thereby release the defendants, their predecessors, successors, heirs, assigns, officers, directors, partners, former partners, employees and attorneys of all claims and demands arising from or relating to the matters alleged in the amended complaint, or arising from or relating to the consummation of the terms of the Stipulation of Settlement. **If you are a member of the Class and neither exclude yourself from the class in the manner provided below nor file a timely and proper Proof of Claim you will be forever barred from any recovery from the defendants with respect to the claims which are or which could have been asserted in this litigation.**

The Stipulation of Settlement sets forth the method of review of Proofs of Claim, with final determination, in the event of rejection of claim, to be made by the Court or by a Master appointed by the Court.

REQUEST FOR EXCLUSION

If you desire to be excluded from the class and the settlement, you must write to:

Clerk
United States District Court
U.S. Courthouse
Foley Square
New York, New York 10007

setting forth your name and address, the number of shares you purchased in the period from April 30, 1969 through October 24, 1973, the dates of such purchases and the prices paid, the number of shares you sold during said period, the dates of such sales and the prices received, and your request to be excluded. Your request for exclusion must be received on or before October 7th, 1975. Any Class member who elects to be excluded from the Class and the settlement remains free to pursue, at suc. Class member's own cost, whatever legal rights such Class member may have.

If you do not elect to be excluded, you may enter an appearance through your own counsel if you desire, and participate in the settlement through such counsel. If you do not request exclusion, and do not enter an appearance through your own counsel your interests in the litigation will be represented by the attorneys for the plaintiffs and the Class, Wolf Popper Ross Wolf & Jones.

ATTORNEYS' FEES, COSTS

If the settlement is approved, the attorneys for plaintiffs will apply for reimbursement of their out-of-pocket expenses and for $260,66_ as fees. The Court will determine the amount of fees to be allowed. Payment of fees and expenses will be made from the Fund. All expenses of administration in consummating the settlement will be borne by Javelin.

OTHER LITIGATION

After this action was commenced, two stockholders started an action in the Federal District Court in Chicago (**Faye Lerle, et ano. v. Canadian Javelin Limited, et al.**, 72 C 3086) based generally on the same issues as are involved in this action, which case has remained dormant, and another action in the Circuit Court of Cook County, Illinois (**Faye Lerle, et ano. v. Canadian Javelin Limited, et al.**, 73 CH 7443) also based generally on the same issues as are involved in this case. In the latter action plaintiffs moved for a class action determination under Illinois Rules and for partial summary judgment and defendants cross-moved for complete summary judgment. The class action motion has been pending since July 17, 1974 and plaintiffs' partial summary judgment motion has been pending since December 17, 1974, both without determination.

EXAMINATION OF PAPERS

The foregoing references to the pleadings, the settlement agreement and other documents are only summaries thereof. For a complete and detailed description of all the terms and conditions and provisions of the settlement agreement, the form of the warrant to be issued, the pleadings and other pertinent papers, reference is made to the underlying documents, the complete texts of which are on file with the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York 10007 where they are available for inspection and copying during regular Court business days.

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Dated: New York, N.Y.
July 9, 1975

S/
MORRIS E. LASKER
Judge

VERIFIED PROOF OF CLAIM AND RELEASE

Pursuant to court order, in order to receive any payments in the below litigation, you must file this Proof of Claim on or before January 16, 1976. If you fail to file by that date, your claim will be subject to rejection and you may be precluded from receiving any money in the settlement of this class action.

Mail your claims promptly to:

Clerk of th. United States District
Court, Southern District of New York
(Re. Bonime v. Doyle, et al., 73 Civ.
5117 (MEL))
United States Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs,
—against—
JOHN C. DOYLE, WILLIAM M. WISMER, and CANADIAN JAVELIN LIMITED, Defendants

73 Civ 5117 (MEL)

CLASS ACTION

_____ being duly sworn, deposes and says

(Insert Name)

I. **IDENTITY OF CLAIMANT:** (Fill in appropriate space in only one of the following paragraphs, either A, B, C, D, or E):

A. **INDIVIDUAL OR JOINT OWNERSHIP**
My (our) name(s) is (are)

and my (our) address is

B. **CORPORATION:**
I am the _____ of
Title
NAME OF CORPORATION
I am authorized to make this claim on behalf of the corporation

C. **PARTNERSHIP:**
I am a member of
a co-partnership, our business address is

I am authorized to make this claim on behalf of the partnership

D. **EXECUTORS OR ADMINISTRATORS:**
I am (we are)

the executor(s) administrator(s) of the Estate of _____, deceased, and my (our) mailing address is

E. **OTHERS:**
(Give full particulars: name, address, on whose behalf you are acting, capacity, etc.).

II. **PURCHASES OF CANADIAN JAVELIN LIMITED COMMON STOCK BETWEEN APRIL 30, 1969 AND OCTOBER 24, 1973, INCLUSIVE**

A. With Respect To Each Purchase, State In Chronological Order In The Schedule Below

1 Date(s) of Purchase	2 No. of Shs Purchased	3 Purchase Price Per Share	4 Tot. price pd excluding commission
COMMON STOCK			

5 If sold, date(s) of sale	6 No of Shares Sold	7 Selling Price per Share	8 Net Sale Price excluding commission	9 Profit or Loss (dif bet Column 4 & 8)

I am enclosing to the extent available the original or facsimile of the broker's confirmations, monthly accounts or other documents evidencing my status and in support of my claim. (If any such documents are not in your possession, please indicate below the name and address where such documents can be obtained).

III. **SUBMISSION TO JURISDICTION OF COURT**

IV. **RELEASE OF DEFENDANTS**

Claimant submits this Proof of Claim under the terms of the Stipulation of Settlement dated July 9, 1975 and claiman: submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to his claim and agrees that a judgment may be entered thereon. Claimant understands that the information contained in this Proof of Claim may be subject to further investigation and discovery under the Federal Rules of Civil Procedure and claimant agrees to furnish additional information to support this claim if required to do so.

In consideration of participating in the settlement claimant does by these presents for himself, his heirs, executors administrators, successors and assigns, remise, release and forever discharge defendants Canadian Javelin Limited and its past and present officers, directors, employees, agents, attorneys, subsidiaries and affiliates and defendants John C. Doyle and William M. Wismer, and their heirs, representatives, agents, attorneys and successors, from all claims which have been asserted in the action, and all claims and causes of action which might have been asserted in connection with or which arise out of, any of the matters alleged in the action, whether known or unknown.

Signed by

STATE OF _____ : as
COUNTY OF _____ :
On this _____ day of _____ 1975 before me personally appeared

known to me to be the person who executed the within instrument and subscribed to and swore to the truth of said instrument before me and acknowledged to me that he/she executed the same.

NOTARY PUBLIC

A146

TO: ALL PERSONS WHO PURCHASED COMMON STOCK OF CANADIAN JAVELIN LIMITED BETWEEN APRIL 30, 1969 AND OCTOBER 25, 1973, INCLUSIVE.

NOTICE OF A CLASS ACTION DETERMINATION, OF A PROPOSED CLASS ACTION SETTLEMENT AND HEARING THEREON, AND REQUIREMENTS FOR FILING PROOFS OF CLAIM

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

against

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

73 Civ. 4017 (MEL)

CLASS ACTION

THIS NOTICE IS GIVEN PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND AN ORDER OF THE ABOVE-NAMED COURT FILED JULY 9, 1976

I. THE NATURE OF THE ACTION

The above-entitled action was commenced on December 5, 1973, by plaintiff Bonime and on December 11, 1974 plaintiff Olden was added as a party plaintiff. The action was prosecuted on behalf of plaintiffs and all other persons similarly situated who bought Canadian Javelin Limited ("Javelin") stock during the period from April 30, 1969 through October 25, 1973, inclusive.

The amended complaint ("Complaint") charged that Javelin and the individual defendants, two of its principal officers, took certain actions in violation of the federal securities laws with the object of inflating the price of Canadian Javelin stock during the period commencing early in 1969 and continuing through October, 1973.

The Complaint charged that Javelin issued various releases and financial statements concerning Javelin's activities in connection with its project to manufacture linerboard in the Provence of Newfoundland, Canada (the "Linerboard Project") and a project to exploit mineral resources in the Republic of Panama, which releases and financial statements allegedly contained untrue statements of fact and omitted material facts.

Specifically with regard to the Linerboard Project, the Complaint alleged that Javelin made statements that production would start in 1971 and that the mill would be the largest and most up-to-date in the world, but Javelin allegedly did not truly reveal the true, the anticipated profitability and commercial feasibility of the project, the production quality or quantity, the cost of the project as compared to cost projections, the financing needed for the project, the extent of the financial support from the Newfoundland government, certain serious disputes with that government concerning the project, and difficulties it was having in obtaining financing.

In or about May, 1972 the Newfoundland government agreed to purchase the Linerboard Project from Javelin. The Complaint went on to allege that Javelin reported in April, 1973 a current asset of $4.3 million dollars as due from that government, but failed to reveal that the government had not acknowledged this claim, nor had Javelin taken the necessary steps to establish this claim.

The Complaint alleged further that the defendants gave the public, by press releases and reports, the false and misleading impression that Javelin had the right to exploit a large copper discovery in Panama, that it had made commercial feasibility studies concerning the copper project, that it had made financial arrangements to begin mining and production, and that it had a favorable arrangement to sell the entire initial output of this project. It is alleged that Javelin failed to disclose publicly that no right to exploit the ore was highly speculative, that neither a final commercial feasibility study nor financial arrangements for mining and production existed and that Javelin was still negotiating for the sale of all or part of the output of the project.

As a result of all these statements and omissions, according to the Complaint, the defendants artificially inflated Javelin's common stock during the 1969-1973 period, and the purchasers of Javelin stock in that period, if they had known the facts about Javelin, would not have bought the stock at the prices they paid which it is alleged were above the fair market value of the stock. The plaintiffs claimed that they and all others similarly situated were damaged because of the wrongful acts set forth in the Complaint which violated the securities laws and the common law, and they asked for judgment against the defendants, for themselves and all other persons similarly situated, in the amount of damages they sustained.

FURTHER PROCEEDINGS

The defendants appeared and filed their answers, in which they denied all charges of wrongdoing which plaintiffs had made in the Complaint, and specifically denied that any releases or reports issued by Javelin were false or misleading.

On February 10, 1976, the Court issued an order allowing this action to be maintained as a class action pursuant to the provisions of Rule 23(b)(3) (1) of the Federal Rules of Civil Procedure, on behalf of all purchasers of Javelin's common stock during the period April 30, 1969 through October 25, 1973, other than the defendants.

Meanwhile, plaintiffs' attorneys had been conducting extensive pre-trial discovery proceedings, including the examination of numerous documents, securing answers to written interrogatories, and examining witnesses under oath.

On July 9, 1976 to avoid further litigation and expense, the defendants agreed to settle this case as a class action, subject to the approval of the Court and notice to the class. Plaintiffs, for their part, accepted and approved the proposed settlement, recognizing, *inter alia*, that the complexity of the issues, involving as they do, relations between Javelin and the Newfoundland Government and between Javelin and the Republic of Panama, would protract and add to the expense of further prosecution, and that the eventual outcome of trial and appeal of this strongly contested litigation is uncertain.

THE CLASS

The settlement agreement establishes as the class covered by it all persons who bought the common stock of Javelin during the period from April 30, 1969 through May 31, 1972 (First Class Period) or during the period from June 1, 1972 through October 24, 1973 (Second Class Period), and their heirs, successors by operation of law and their legal representatives, but excluding any person who was a director, officer or employee of Javelin at any time during the period from April 30, 1969 through October 24, 1973 and their successors, assigns and their family members or any trust in which they are trustor, trustee or beneficiary, or any person who had access to information not publicly available concerning the Linerboard Project, the amount which was claimed by Javelin from the Newfoundland government or the project to exploit mineral resources in Panama, as well as any persons who requests exclusion from the class in accordance with the procedures of Rule 23 of the Federal Rules of Civil Procedure.

THE SETTLEMENT

The terms of the settlement are set forth in the Stipulation of Settlement dated July 9, 1976, between the plaintiffs and the defendants. The following is a brief summary of its terms:

The defendants agree to pay into a settlement fund (the "Fund") the sum of $1,350,000.00. They will agree among themselves what portion of this sum each will pay. The payment of Javelin will be announced prior to the issuance of this notice to the members of the class, and will be at its option either in cash, stock or warrants or a combination of cash, stock and/or warrants.

The warrants are to be ten-year warrants each entitling the holder to purchase one-half share of Javelin stock at the market price (as defined in the Stipulation), this market price to be the average of the closing prices of Javelin stock on the American Stock Exchange during a stated period prior to the date of the settlement hearing referred to below. Javelin is to take the necessary steps to get the warrants listed on the American Stock Exchange or, in the event such listing is rejected, on the Montreal Stock Exchange, and to get the underlying stock registered. If the stock is not registered within a fixed period of time, each four warrants will be convertible into a share of Javelin common stock. The value of each warrant will be determined by an expert to be designated by plaintiffs' attorneys.

Every class member who has sustained a loss from the sale of Javelin stock purchased during the period from April 30, 1969 through October 24, 1973, in excess of profits made on the sale of Javelin stock purchased during the said period will be entitled to a proportionate share of the Fund on the filing of proper Proofs of Claim. One third of the Fund will be allocated to those who purchased stock in the First Class period and two thirds to those who purchased in the Second Class Period.

HEARING ON APPROVAL OF THE SETTLEMENT

YOU ARE HEREBY NOTIFIED that a Hearing will be held on October 12th, 1976 at 9:30 A.M. before Honorable Morris E. Lasker, Judge of the United States District Court for the Southern District of New York, in Room No. 618, United States Courthouse, Foley Square, New York, N.Y., pursuant to an Order of that Court dated July 9, 1976, to determine whether the proposed settlement of the above-entitled class action litigation should be approved by the Court as fair, reasonable and adequate and whether said action should be dismissed on the merits and with prejudice as to the defendants.

If you are a member of the Class described above, your rights will be affected by these proceedings. At the Hearing any member of the Class may appear and show cause, if any he has, why the proposed settlement should not be approved as fair, reasonable and adequate and why this litigation should not be dismissed on the merits with prejudice, provided that no such person shall be heard and no papers or briefs shall be submitted to the Court, except by special permission of the Court, unless on or before September 29th, 1976, notice of intention to appear and a statement of the basis for objection, together with a memorandum of supportive authorities, are filed with the Court and mailed first class not later than September 29th, 1976, to Wolf Popper Ross Wolf & Jones, Esqs., 845 Third Avenue, New York, New York 10022, attorneys for the plaintiffs, Diamond & Golomb, P.C., 99 Park Avenue, New York, New York 10016, attorneys for defendant Canadian Javelin Limited, and Mason Krisler, Esq., 800 Engineers Building, Cleveland, Ohio 43114, attorney for the individual defendants.

PARTICIPATION IN THE FUND AND REQUIREMENTS OF FILING A PROOF OF CLAIM

Javelin has exercised its option as to the form of its payment into the Fund, by agreeing that it and the individual defendants will pay the total amount of settlement, $1,350,000, in cash.

In order to receive the proportionate share of the Fund to which you may be entitled, you are required to complete and file no later than January 16, 1976, a Proof of Claim on the form approved by the Court, set forth below, together with broker's confirmations or monthly accounts relative to all purchases of Javelin common stock during the class periods and sales of such Javelin common stock, if such documents are in your possession or under your control. Any class member who does not timely file the Proof of Claim will not be permitted to share in the settlement.

Upon acceptance of your Proof of Claim and receipt of your distributive share of the Fund, you will thereby release the defendants, their predecessors, successors, heirs, assigns, officers, directors, partners, former partners, employees and attorneys of all claims and demands arising from or relating to the matters alleged in the amended complaint, or arising from or relating to the consummation of the terms of the Stipulation of Settlement. If you are a member of the Class and neither exclude yourself from the class in the manner provided below nor file a timely and proper Proof of Claim you will be forever barred from any recovery from the defendants with respect to the claims which are or which could have been asserted in this litigation.

The Stipulation of Settlement sets forth the method of review of Proofs of Claim, with final determination in the event of rejection of claim, to be made by the Court or by a Master appointed by the Court.

REQUEST FOR EXCLUSION

If you desire to be excluded from the class and the settlement, you must write to

Clerk, United States District Court
U.S. Courthouse, Foley Square, New York, New York 10007

setting forth your name and address, the number of shares you purchased in the period from April 30, 1969 through October 24, 1973, the dates of such purchases and the prices paid, the number of shares you sold during said period, the dates of such sales and the prices received, and your request to be excluded. Your request for exclusion must be received on or before October 7th, 1976. Any Class member who elects to be excluded from the Class and the settlement remains free to pursue, at such Class member's own cost, whatever legal rights such Class member may have.

If you do not elect to be excluded, you may enter an appearance through your own counsel if you desire, and participate in the settlement through such counsel. If you do not request exclusion, and do not enter an appearance through your own counsel your interests in the litigation will be represented by the attorneys for the plaintiffs and the Class, Wolf Popper Ross Wolf & Jones.

ATTORNEYS' FEES, COSTS

If the settlement is approved, the attorneys for plaintiffs will apply for reimbursement of their out-of-pocket expenses and for $250,000 as fees. The Court will determine the amount of fees to be allowed. Payment of fees and expenses will be made from the Fund. All expenses of administration in consummating the settlement will be borne by Javelin.

OTHER LITIGATION

After this action was commenced, two stockholders started an action in the Federal District Court in Chicago (Faye Lurie, et ano. v. Canadian Javelin Limited, et al., 74 C 3086) based generally on the same matters as are involved in the action which is now before your court, and another action in the Circuit Court of Cook County, Illinois (Faye Lurie, et ano. v. Canadian Javelin Limited, et al., 74 L 7447) also based generally on the same issues as are involved in this case. In the latter action plaintiffs moved for a class action determination under Illinois Rules and for partial summary judgment and defendants cross-moved for complete summary. The class action motion has been pending since April 12, 1976 and plaintiffs' partial summary judgment motion has been pending since December 17, 1974 both without determination.

EXAMINATION OF PAPERS

The foregoing references to the pleadings, the settlement agreement and other documents are only summaries thereof. For a complete and detailed description of all the terms, conditions and provisions of the settlement agreement, the form of the warrant to be issued, the pleadings and other pertinent papers, reference is made to the underlying documents, the complete texts of which are on file with the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York under the file number set forth above, where they are available for inspection and copying during regular Court business days.

BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Dated: New York, N.Y.
July 9, 1976

S/ MORRIS E. LASKER

MORRIS E. LASKER, Judge

VERIFIED PROOF OF CLAIM AND RELEASE

Pursuant to court order, in order to receive any payments in the below litigation, you must file this Proof of Claim on or before January 16, 1976. If you fail to file by that date, your claim will be subject to rejection and you may be precluded from receiving any money in the settlement of this class action.

Mail your claim promptly to:

Clerk of the United States District Court, Southern District of New York
(Re Bonime v. Doyle, et al., 73 Civ. 4017 (MEL))
United States Courthouse, Foley Square, New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

—against—

JOHN C. DOYLE, WILLIAM M. WISMER, and CANADIAN JAVELIN LIMITED,

Defendants.

73 Civ. 4017 (MEL)

CLASS ACTION

I, (I) (We), ... being duly sworn, deposes and state(s):
(Insert Name)

1. IDENTITY OF CLAIMANT: (We) (I) am (are) (is) in appropriate space in only one of the following paragraphs, either A, B, C, D or E):

A. INDIVIDUAL OR JOINT OWNERSHIP: My (our) domicile is (are) .....

and my (our) address is .....

B. CORPORATION: I am the ..... Title of ..... NAME OF CORPORATION

I am authorized to make this claim on behalf of the corporation.

C. PARTNERSHIP: I am a member of ..... a co-partnership, each whose address is .....

I am authorized to make this claim on behalf of the partnership.

D. EXECUTORS OR ADMINISTRATORS: I am (we are) ..... the executor(s) administrator(s) of the Estate of ..... deceased, and my (our) mailing address is .....

E. OTHERS: (Give full particulars: name, address, on whose behalf you are acting, capacity etc.) .....

II. PURCHASES OF CANADIAN JAVELIN LIMITED COMMON STOCK BETWEEN APRIL 30, 1969 AND OCTOBER 24, 1973, INCLUSIVE

A. With Respect To Each Purchase, State In Chronological Order In The Schedule Below:

1. Dataset of Purchase	2. No. of Shs. Purchased	3. Purchase Price Per Share	4. Tot. Price (at excluding commissions)	5. If sold, date(s) of sale	6. No of Shares Sold	7. Selling Price per Share	8. Net Sale Price excluding commissions	9. Profit or Loss (dif bet Columns 4 & 8)
COMMON STOCK								

I am enclosing (to the extent available) the original (if possible of the broker's confirmations, monthly accounts or other documents evidencing my status and as support of my claim. (If any such documents are not in your possession, please indicate below the name and address where such documents can be obtained).

III. SUBMISSION TO JURISDICTION OF COURT AND RELEASE OF DEFENDANTS

Claimant submits this Proof of Claim under the terms of the Stipulation of Settlement dated July 9, 1976, and claimant submits to the jurisdiction of the United States District Court for the Southern District of New York with respect to his claim and agrees to be bound by and subject to the terms of any judgment that shall be entered upon the Stipulation of Settlement. Claimant understands that the information contained in this Proof of Claim may be subject to further investigation and discovery under the Federal Rules of Civil Procedure and claimant agrees to furnish additional information to support this claim if required to do so.

In consideration of participating in the settlement claimant does by these presents for himself, his heirs executors, administrators, successors and assigns, remise, release and forever discharge defendant Canadian Javelin Limited and its past and present officers, directors, employees, agents, attorneys, subsidiaries and affiliates and defendants John C. Doyle and William M. Wismer, and their heirs, representatives, agents, attorneys and successors, from all claims which have been asserted in the action, and all claims and causes of action which might have been asserted in connection with, or which arise out of, any of the matters alleged in the action, whether known or unknown.

Signed by: .....

STATE OF
COUNTY OF

On this ..... day of ....., 1976, before me personally appeared .....

known to me to be the person who executed the within instrument and ..... to me to be the truth of and instrument before me and acknowledged to me that (s)he executed the same.

NOTARY PUBLIC

Dominion of Canada
PROVINCE OF ONTARIO

JUDICAL DISTRICT OF YORK

TO WIT:

In the Matter of
CANADIAN JAVELIN LIMITED

I, Debra Violet Robinson of the City of Toronto,
in the Municipality of Metropolitan Toronto, in the Province of Ontario, legal advertising representative,

the advertisement Notice of a Class Action Determination, of a Proposed class Settlement and Hearing Thereon, and Requirements for Filing Proofs of Claim
a true copy of which is hereto annexed, was duly published in the issues of **The Globe and Mail** a daily newspaper, published in the City of Toronto, Canada, on the following dates, namely:

September 6th, A.D. 1975

That I have examined copies of the said newspaper published on the said dates and found the said advertisement to be correctly inserted therein.

And I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of "The Canada Evidence Act."

Declared before me at the City
of Toronto
in the Judical District of York
this 2nd day of October
A.D. 19 75

Debra Violet Robinson

A Commissioner, etc.

GORDON V. BROWN, a Commissioner, Judicial District of York, for the Globe & Mail Limited. My appointment expires Jan. 11, 1976.

A148

TO: ALL PERSONS WHO PURCHASED COMMON STOCK OF CANADIAN JAVELIN LIMITED BETWEEN APRIL 30, 1969 AND OCTOBER 24, 1973, INCLUSIVE.

NOTICE OF A CLASS ACTION DETERMINATION, OF A PROPOSED CLASS ACTION SETTLEMENT AND HEARING THEREON, AND REQUIREMENTS FOR FILING PROOFS OF CLAIM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

against

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

73 Civ. 5117 (MEL)

CLASS ACTION

THIS NOTICE IS GIVEN PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND AN ORDER OF THE ABOVE-NAMED COURT FILED JULY 9, 1975

1. THE NATURE OF THE ACTION

The above-entitled action was commenced on December 3, 1973, by plaintiff Bonime, and on December 11, 1974 plaintiff Olden was added as a second plaintiff. The action was prosecuted on behalf of plaintiffs and all other persons similarly situated who bought Canadian Javelin Limited ("Javelin") stock during the period from April 30, 1969 through October 24, 1973, inclusive.

The amended complaint ("Complaint") charged that Javelin and the individual defendants, two of its principal officers, took certain actions in violation of the federal securities laws with the object of inflating the price of Canadian Javelin stock during the period commencing early in 1969 and continuing through October, 1973.

The Complaint charged that Javelin issued various press releases and financial statements concerning Javelin's activities in connection with its prospective mineral development in the Province of Newfoundland, Canada (the "Lanethorpe Project") and a project to explore mineral resources in the Republic of Panama, which press releases and financial statements allegedly contained untrue statements of fact and omitted material facts.

Specifically with regard to the Lanethorpe Project, the Complaint alleged that Javelin made statements that production would start in 1973 and that the mill would be the largest and most up to date in the world, but Javelin allegedly did not truly reveal the ease, the anticipated problems and commercial feasibility of the project, the production quality or quantity, the cost of the project as compared to cost projections, the financing needed for the project, the degree of the financial support from the Newfoundland government, certain serious disputes with that government concerning the project, and difficulties it was having in obtaining financing.

In or about May, 1972 the Newfoundland government agreed to purchase the Lanethorpe Project from Javelin. The Complaint went on to allege that Javelin reported in April, 1973 a current asset of $6.3 million dollars as due from that government but failed to reveal that the government had not acknowledged this claim, nor had Javelin taken the necessary steps to establish the claim.

The Complaint alleged further that the defendants gave the public by press releases and reports the false and misleading impression that Javelin had the right to exploit a large copper discovery in Panama that it had made commercial feasibility studies concerning the copper project that it had made financial arrangements to begin mining and production, and that it had a favorable arrangement to sell the entire initial output of the project. It is alleged that Javelin failed to disclose publicly that its right to exploit the area was highly speculative, that neither a final commercial feasibility study nor financial arrangements for mining and production existed and that Javelin was still negotiating for the sale of any or part of the output of the project.

As a result of all these statements and omissions, according to the Complaint, the defendants artificially inflated Javelin's common stock during the 1969-1973 period, and the purchasers of Javelin stock at that period of time had known the facts about Javelin, would not have bought the stock at the prices they paid which it is alleged were above the fair market value of the stock. The plaintiffs claimed that they and all others similarly situated were damaged because of the wrongful acts set forth in the Complaint which violated the securities laws and the common law, and they asked for judgment against the defendants, for themselves and all other persons similarly situated, in the amount of damages they sustained.

FURTHER PROCEEDINGS

The defendants appeared and filed their answers in which they denied all charges of wrongdoing which plaintiffs had made in the Complaint, and specifically denied that any releases or reports issued by Javelin were false or misleading.

On February 10, 1975, the Court issued an order allowing this action to be maintained as a class action pursuant to the provisions of Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all purchasers of Javelin's common stock during the period April 30, 1969 through October 24, 1973, other than the defendants.

Meanwhile, plaintiffs' attorneys had been conducting extensive pre-trial discovery proceedings including the examination of numerous documents, securing answers to written interrogatories and examining witnesses under oath.

On July 9, 1975 to avoid further litigation and expense, the defendants agreed to settle this case as a class action, subject to the approval of the Court and notice to the class. Plaintiffs, for their part, accepted and approved the proposed settlement recognizing, inter alia, that the complexity of the issues, involving as they do relations between Javelin and the Newfoundland Government and between Javelin and the Republic of Panama, would protract and add to the expense of further prosecution, and that the eventual outcome of trial and appeal of this strongly contested litigation is uncertain.

THE CLASS

The settlement agreement establishes as the class covered by it all persons who bought the common stock of Javelin during the period from April 30, 1969 through May 31, 1972 (First Class Period) or during the period from June 1, 1972 through October 24, 1973 (Second Class Period), and their heirs, successors by operation of law and their legal representatives, but excluding any person who was a director, officer or employee of Javelin at any time during the period from April 30, 1969 through October 24, 1973 and their families or assigns and their families, members of any such excluded person's immediate family or any person who had access to information not generally available to the public concerning the Lanethorpe Project, the amount of which was claimed by Javelin from the Newfoundland government, the project to exploit mineral resources in Panama, as well as any person who requests exclusion from the class in accordance with the provisions of Rule 23 of the Federal Rules of Civil Procedure.

THE SETTLEMENT

The terms of the settlement are set forth in the Stipulation of Settlement dated July 9, 1975 between the plaintiffs and the defendants. The following is a brief summary of its terms:

The defendants agree to pay, in settlement and in the sum of $[illegible] ... will agree among themselves what portion ... shall be paid ... to the members of the class, and ... of Javelin's assets or a combination of both stock and/or warrants.

The warrants ... will be exercisable by the holder to purchase one half share of Javelin stock at the market price (as ... known as Stock Exchange Closing Price) of Javelin stock on the closing price of Javelin stock ... [illegible] ... to exercise the warrants ... [illegible] ... to get the warrants listed on the Montreal Stock Exchange ... [illegible] ... underlying stock registered ... [illegible] ... each four warrants will be convertible ... [illegible] ... share of Javelin common stock. The ... [illegible] ... to be designated by plaintiffs' attorneys ... [illegible] ... issued from April 30, 1969 through October 24, 1973 (Second Class Period) ... [illegible] ... entitled to a proportionate share of ... [illegible] ... purchased during the said period ... [illegible] ... Javelin stock in the First Class period ... [illegible] ... Fund will receive ... [illegible] ... [illegible] ... [illegible]

State of New York
CITY AND COUNTY OF NEW YORK }

Theresa Dowling being duly sworn says she is the principal clerk of the Publisher of The New York Times a daily newspaper of general circulation printed and published in the City and County of New York, that the advertisement hereto annexed has been regularly published in the said The New York Times one time.

To wit on August 25th, 19 75

Sworn to before me this 26th day of September, 1975

.....

.....

WILLIAM PEEMOELLER
Notary Public, State of New York
No. 3050200
Qualified in Nassau County
Commission Expires March 30, 1977

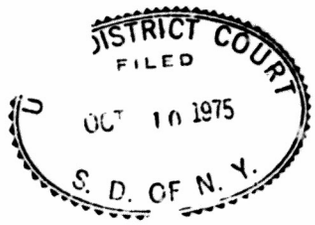
A150

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Affidavit of P. J. DeSantis has been mailed by regular U.S. mail on October 10, 1975 to Benedict Wolf, Esq., of Wolf, Popper, Ross, Wolf & Jones, 845 Third Avenue, New York, N. Y. 10022, attorney for plaintiffs, and Martin Ozer, Esq., 475 Fifth Avenue, New York, N.Y. attorney for defendants John C. Doyle and William Wismer.

IRVING L. GOLOMB

SUPPLEMENTAL AFFIDAVIT OF BENEDICT WOLF IN SUPPORT OF PROPOSED SETTLEMENT (Pages A152-A163)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

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73 Civ. 5117 (MEL)

SUPPLEMENTAL AFFIDAVIT

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

BENEDICT WOLF, being duly sworn deposes and says:

1. My affidavit in support of the proposed settlement in this action has already been submitted to the Court. I am submitting this supplemental affidavit in response to certain objections to the settlement which have been filed on behalf of Faye and H. Haskell Lurie, plaintiffs in two actions pending in Chicago, based on the issues involved herein, and on behalf of one Sylvia Einstein.

2. In support of the objections of said Luries and Einstein, Robert Plotkin, the attorney who represents the Luries in the Chicago cases, has presented a mass of material, most of it irrelevant to the issue before the Court. The settlement which we are presenting for approval must be judged on its own merits, rather than on whether an attorney handling two similar actions elsewhere, in which he was conducting active settlement negotiations for months,

could, as he claims, have achieved in his cases as good a settlement as the one being presented to this Court.

3. I respectfully submit that neither the material which Mr. Plotkin has submitted, ostensibly in support of his clients' objections, dealing with his correspondence with and conversations with various attorneys for the defendants in his aborted settlement negotiations, nor his pleadings in his state and federal court case in Chicago, nor a proposed order prepared by him in a still undetermined motion for summary judgment in the state court action have any bearing on the issue before this Court and should be disregarded.

4. In view of the pendency of their cases in Chicago, and the time their attorney has already devoted to their cases, Mr. Plotkin's clients have, of course, the right to opt out if the proposed settlement does not please them. I would not ordinarily respond to an objection to a proposed settlement in this fashion, but as recently as August 25th of this year, in a Memorandum submitted in his federal case in Chicago, where he was opposing the transfer of that case to New York, Mr. Plotkin informed the Court his clients were opting out of this settlement. He stated flatly "1/ Plaintiffs in the case at bar will opt-out of the Bonime case." This was in a footnote to the following statement in support of his opposition to transfer:

> "Defendant's motion to transfer is extraordinary. The reason is that the action pending in New York is about to be settled. In view of the fact that proposed settlements which have reached this stage are virtually always approved by the court, it must be assumed that this settlement will be approved. Plaintiffs in the case at bar have no doubt at all that it will be approved." 1/

5. The foregoing is a clear admission that the settlement we have submitted to the Court is a good one and warrants approval. Any other interpretation of Mr. Plotkin's statement would be a slur on our courts which I am not willing to believe Mr. Plotkin is guilty of.

6. Mr. Plotkin makes several other statements not dealing with the merits of the settlement, to which I am constrained to respond. He asserts that the facts "suggest very strongly" that the bulk of plaintiffs' discovery in the instant case, including the depositions was conducted as an adjunct of our settlement negotiations and not for the purpose of preparing the case for trial (Plotkin affidavit, ¶8). I am not sure just what an adjunct "of settlement negotiations" means, except that in its setting it sounds somewhat pejorative. But since by his own admission Plotkin's negotiations for settlement started in 1974 and "did not terminate until June or July of this year" (Plotkin affidavit, ¶4(b)), and our interrogatories had been served in January, 1975 and were answered in April, 1975, our demand for documents was made in early 1974 responded to by defendants in April, 1974, documentary discovery was completed before the end of 1974, and our depositions of the two principal witnesses for defendants took place in February, 1975, it is difficult to understand what Mr. Plotkin is talking about.

7. Mr. Plotkin in his Memorandum and affidavit incorrectly described two telephone conversations I had with him on June 4th and 5th of this year. We got in touch with

Mr. Plotkin many months earlier to suggest a cooperative effort in the New York and Chicago cases, but this suggestion had evoked no enthusiasm on his part.

8. When he called on June 4th, he suggested that we work together so that perhaps we could achieve a larger settlement than defendants were willing to agree to, either with him or us, perhaps $2 million to be paid in stock. He made it clear that "working together" meant that he should continue his action in the state court in Chicago, where he said the Judge would take an active rather than a passive role in the conduct of the litigation, while we delayed proceedings in New York. I told him we were so far along in our pre-trial discovery in the instant case that we were disinclined to stop now in order to join forces in Chicago, but that I would consider his suggestion and telephone him the next day.

9. On June 5th I telephoned Plotkin and said we did not think his suggestion of proceeding in the Chicago state court would make for an orderly or early resolution of the issues but that if he were willing to have the matter proceed in New York and have us act in effect as general counsel, I was sure that, assuming there was a successful outcome of the litigation either by settlement or trial, we could work out a participation by him in any fee award thus assuring him that he would be compensated for the work he had done in Chicago and would do with us in New York. Plotkin said this was a "typical New York proposal" and he was not interested in it. That was the last I heard from him. He never mentioned a figure of $30 million to $50 million

as a possible damage figure, and of course for him to talk of settlement of $2,000,000 in stock against such damage figures would have made no sense.

10. While the objections filed by Mr. Plotkin and the attached exhibits are bulky, neither his Memorandum, his affidavit nor the attached exhibits address themselves in any meaningful way to the issues of the settlement. They do not deal with "weighing the probability and consequences of success on the merits against the terms of the settlement," which he sets forth as the basic test for fairness of a class action settlement (Plotkin Memorandum p. 6). There is nothing presented to this Court either by way of analysis of the documentary material which Mr. Plotkin says he received nor analysis of the depositions he took in his case, nor, the evidence - the answers to interrogatories, the depositions of witnesses, the exhibits attached to the depositions - which are part of the instant case and which were filed in this Court more than a month before the Lurie objections were filed. There is no indication that he even took the trouble to examine this material in order to be able to make an intelligent evaluation of the proposed settlement instead of reacting like a spurned suitor.

11. The presentation to this Court, as exhibits, of his own proposed order on a motion for summary judgment pending in the Chicago State Court since December, 1974, still undetermined, or his pleadings and proposed pleadings in the Chicago action or the SEC complaint can hardly be considered a substitute for a presentation of evidence which would

BEST COPY AVAILABLE

assist the Court in weighing the probability of success of the litigation, an important element in the determination of whether a settlement should be approved.

12. In fact it is difficult to see how Mr. Plotkin could have been discussing various settlement figures with the defendants when he had never examined a single witness on the merits of the case against the defendants.

13. Nowhere in Mr. Plotkin's presentation is there any discussion of the difficulties of securing evidence in this case from the key figures involved, the top officials of the Newfoundland government, who claimed sovereign immunity when we tried to subpoena them, the top officials of the Panamanian government who are beyond the reach of our subpoenas, the key defendants - Doyle and Wismer - who took refuge in the Fifth Amendment.

14. Mr. Plotkin makes the statement that since Doyle will not testify, defendants cannot win (Plotkin Memorandum, p. 8). His conclusion that Doyle's testimony is essential to defendants' case is amazing. The courts have long recognized that in stockholder actions, the plaintiffs must perforce rely on the defendants for their proof (e.g. Schoenbaum v. Firstbrook, 405 F.2d 215, cert. denied 395 U.S. 906). In paragraph 28 of the SEC complaint (Plotkin's Exhibit 7), the SEC states:

> "Commission efforts to obtain facts concerning these issues [whether certain securities had to be registered] and other allegations contained in this complaint have been impeded by the inability to obtain testimony under oath of Doyle regarding CJV's affairs and the unavailability of relevant witnesses and corporate records within the United States."

The fact that the SEC gave up its demand for a Special Receiver for Javelin and accepted a settlement of lesser impact seemed to me at least to indicate that it concluded that the unavailability of Doyle's testimony made its case more difficult to prove, not easier.

15. While the basis for plaintiffs' acceptance of the settlement is set forth fully in my affidavit of October 8, 1975, I want to address myself briefly to certain specific objections which Mr. Plotkin advances on behalf of his clients.

16. He asserts that the proposed settlement is "grossly unfair, unreasonable and inadequate" but neglects to offer any support for this assertion, other than a statement in his Memorandum (p. 7) that:

> "It is estimated that the class claims in the case at bar range between $30 million and more than $50 million.2/ While the exact amount of the potential damages cannot be fixed with certainty, it is a certainty that they are huge."

The footnote says only; 'See Plotkin affidavit, ¶ 2(d)."

17. When we turn to the Plotkin affidavit for support of this estimate, we find not a word as to what calculations were made, by whom, when, what statistical methods were used, only a reference to "further calculations" and a repetition of an estimate. This is hardly enough to support his characterization of the proposed settlement.

18. Nor is much added by talking of $1,350,000 in cash as a "meager sum", or referring to a "paltry settlement".

He attempts to bolster his attack on the proposed settlement by asserting that the claims of the class "are very, very strong" and that "it is difficult to conceive how the defendants could possibly win," (Plotkin affidavit, p. 8) a bold statement indeed for a litigator to make. But instead of then presenting facts to the Court to support these assertions, Mr. Plotkin promises to present to the Court, at the hearing, papers he filed in connection with his motion for Partial Summary Judgment in the Cook County Circuit Court, which papers "leave no doubt as to the liability of the defendants". We are left with the question of why, if the liability is so clear, the Circuit Court Judge has not yet decided the motion which was submitted to him in December, 1974, nor why, if the liability is so clear, Mr. Plotkin even considered a settlement of $1 million, or even $2 million.

19. I submit that nothing has been presented to the Court to support the Plotkin assertion that the settlement is unfair, unreasonable and inadequate.

20. A further basis for objection advanced by Mr. Plotkin is that "the notice sent to class members was materially misleading" because it contains the words "NOTICE OF A CLASS ACTION DETERMINATION..." and the statement that the Court issued an order allowing the action to be maintained as a class action purcuant to F.R.C.P., Rule 23(c)(1) on behalf of purchasers of Javelin's stock in the period from April 30, 1969 to October 25, 1973, thus indicating

"that an independent, binding class determination had been made by the Court, when in fact this is not true," since the defendants had consented to the class and "the defendants have in effect chosen the representatives of the class." (Underlining in the original). Plotkin Memorandum, pp. 10-11. If Mr. Plotkin had taken the trouble to read the papers submitted to the Court in connection with the motion for class action determination, he would never have made the statement I have quoted, a statement which seems to imply that the Court acted as a rubber stamp without making its own evaluation of the matter presented to it.

21. In his Memorandum (p. 12) Mr. Plotkin pursues this theme a little further, when he talks about "certain facts" (not set forth) "which suggest quite strongly that the defendants have been able to exert great self-benefitting leverages in their settlement negotiations in the case at bar by dangling a settlement class before the plaintiffs. In other words,the defendants have been able to obtain a small settlement as a result of agreeing to a tentative settlement class."

22. This statement makes no sense, since our motion for class action determination was made in January, 1975, about six months before we reached a settlement, six months during which the defendants were actively conducting settlement negotiations with Plotkin. To the extent that the statement imputes any impropriety on our part, in permitting defendants to have anything to say about what class we would seek to establish, it is false.

23. The statement makes even less sense when we consider that in his Chicago state action, Plotkin sought a class comprised of those who purchased on or after November 1, 1969 (rather than April 30, 1969) and the federal action was brought on behalf of those persons who bought Javelin stock on or after June 1, 1973.

24. Mr. Plotkin also claims the notice was misleading because it stated that his federal court case has remained dormant. I am informed that in the period from November, 1974 to July 9, 1975, no action was taken by either party to the case. In the State Court action, the motion by plaintiff for pre-trial summary judgment was filed in December, 1974 and the class action motion in July, 1974.

25. The objection to the settlement on the ground that "the parties' formation of a tentative class action for settlement is improper" must be meant for some other case, not this one. This Court granted an order establishing the class in February 10, 1975 long before there was any settlement. The establishment of the class had nothing to do with any settlement and was not a tentative class in any sense of the word.

26. Mr. Plotkin's final objection is that the notice imposes unlawful burdens in the making of objections and imposes an unlawful condition on opting out. I respond only that the provision in the notice to which Mr. Plotkin objects, including the provision that the Court can grant special permission to a class member to appear and be heard

even if he did not file any papers, has been approved by Courts all over the country. Mr. Plotkin cites no authority in support of his position.

27. I respectfully submit that there is no merit to the objections presented by Mr. Plotkin on behalf of the Luries* and Sylvia Einstein, and they should be overruled and the settlement approved.

Benedict Wolf

BENEDICT WOLF

Sworn to before me this
9th day of October, 1975

Bertha Feldman

Notary Public

BERTHA FELDMAN
Notary Public, State of New York
No. 41-1184735
Qualified in Queens County
Commission Expires March 30, 1977

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* I have just been informed that despite the lengthy objections to the settlement submitted to this Court by Mr. Plotkin on behalf of the Luries as well as Sylvia Einstein, a notice has been received by the Clerk of the Court from Mr. Plotkin stating that the Luries are opting out of the settlement.

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GILL WALKER being duly sworn, deposes and says that s he is employed by WOLF POPPER ROSS WOLF & JONES, the attorneys for the above named Plaintiffs

herein. That on the 10th day of October , 1975 s he served the within Supplemental Affidavit

upon Diamond & Golomb, P.C., and Steptoe & Johnson, attorneys for defendant Canadian Javelin Limited, Moses Krislov, and Martin Ozer, attorneys for defendants John C. Doyle and William M. Wismer and Robert Plotkin, attorney for plaintiffs Faye and H. Haskell Lurie and Einstein

the attorneys for the above named

by depositing a true copy of the same, securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 845 Third Avenue, New York, New York, 10022, directed to said attorneys for the parties above named at 99 Park Avenue, New York, N.Y. 10016, 1250 Connecticut Avenue, N.W. Washington, D.C. 20036, 800 Engineers Building, Cleveland, Ohio 33114 and 475 Fifth Avenue, New York, N.Y., and 33 North Dearborn Street, Chicago, Illinois 60602

those being respectively the addresses within the State designated by them for that purpose upon the preceding papers in this action, or the place where they then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of twenty-one years.

Gill Walker
GILL WALKER

Sworn to before me this 10th day of October , 19 75

Maryann M. Falls
Notary Public

MARYANN M. FALLS
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, [illegible]

ADDITIONAL AFFIDAVIT OF BENEDICT WOLF (Pages A164-A170)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

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73 Civ. 5117 (MEL)

ADDITIONAL AFFIDAVIT

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

BENEDICT WOLF, being duly sworn deposes and says:

1. I submit this additional affidavit in response to various objections which have been filed in opposition to the proposed settlement. I have previously submitted an affidavit in response to the Lurie-Einstein objections.

2. Six persons have filed objections to the settlement, in addition to the Luries and Einstein, out of the thousands of members of the class. The Luries have opted out, so their objections must be deemed withdrawn. I want to address myself to the objections raised by five of the others, excluding Sloan, with whom I shall deal separately.

3. One objection (by Friedman and perhaps Hanft) is that the amount received by way of settlement is too small. What we finally agreed to was achieved through hard bargaining and I have already stated to the court in my affidavit of October 8, 1975 the reasons why I think the settlement of the case for a cash payment of $1,350,000 is a good one.

4. Three of the objectors (Friedman, Goldstone, Klein) base their objections in whole or in part on the fact that those who bought in the class period, but have not sold, are excluded from the benefits of the settlement. This is a mistaken impression. Anyone who bought during the class period and suffered a loss, whether such purchaser sold the stock or still holds, is entitled to share in the settlement fund. This is made clear not only by the description of the class, but by the wording of the proof of claim which asks for additional information from those members of the class who sold. It is also made clear by the Stipulation of Settlement. The loss for the non-sellers is fixed as if they had sold when trading resumed on January 25, 1975. By that time full information of the SEC charges had been disseminated in the press, the company had informed the stockholders of the SEC suit and the company had issued corrective material. I find no merit in the suggestion (Klein) that the loss for the non-sellers should be figured on the basis of the price of the stock when notice of this settlement was sent out, as though this was the first time the stockholders knew anything about the situation. By January 25, 1975, when they could have sold their stock, they had been fully informed.

5. A further objection (Leonard, Friedman) is made that the class does not cover those who purchased before April 30, 1969. This date was chosen because that was when Javelin issued what we considered to be the first misleading annual report dealing with the Linerboard Project. I confess to a great deal of sympathy with those who bought earlier and held their stock during the class period because of the alleged

misrepresentations by the defendants to their loss, but unfortunately the federal securities laws as presently interpreted prevents us from seeking relief for them.

6. One of the objectors (Friedman) criticizes the provision that profits made during the class period must be offset against the losses. I submit that this provision is justified. Our case is based on the assertion that Javelin stock was over priced during the class period because of certain misrepresentations by the defendants. Persons who sold during the period at a profit were getting the benefit of these misrepresentations. It seemed to us that if they also sold at losses they should not be able to keep their profits and also be compensated for their losses at the expense of other members of the class who made no profit but only suffered losses - persons who perhaps had bought the very stock these other class members had sold at a profit.

7. Two of the objectors (Goldstone, Friedman) protest the provision allowing the defendants to decide among themselves what each should contribute to the fund, and one of them (Friedman) also objects to fees for plaintiffs attorneys because he says among other things that we "did not work adequately... for the corporation's benefit versus the individual defendants." This misconceives the role and duty of the class representatives and their attorneys. Our duty is to the class, not to the corporation. The interests of the class in this case are adverse to those of the corporation. Any imbalance in contribution by the defendants may be subject to attack in a derivative action but not in the instant class action.

8. One objector (Friedman, who is an attorney) is aggrieved because the plaintiffs did not give "earlier notice" to the members of the class and thus have "lost the potential advice of many knowledgeable members of the class and class owners possessing substantial amounts of stock." He says that plaintiffs' counsel could have by interrogatories found the names of other prospective class members "and given them notice as to the various techniques being planned and as to the tentative agreement of settlement." In the first place, Javelin in its 1973 Annual Report, issued in August, 1974, listed this action by name, stated the court in which it had been brought, described it as a class action and stated the basis of the complaint. Thus, all stockholders, including the objector, were put on notice that this action was pending. Secondly, the Notice to Stockholders,informing them of the proposed settlement, meets the objector's request regarding "the tentative agreement of settlement", since this agreement is tentative until it is approved by the Court. The idea of informing all class members (or perhaps only knowledgeable ones and those with substantial stockholdings) of the various techniques we were planning in preparation for trial, and thus inevitably also informing defendants of these plans, obviously is not an idea which any trial attorney would be prepared to accept. I make no comment on the additional cost which a preliminary notice would have entailed, and which plaintiffs would have had to bear.

9. Some papers were filed by Samuel A. Sloan, but it is difficult to tell from them whether he considers himself a member of the class, objecting to a settlement by which he may be bound, or is asking to be excluded from the class

(Sloan Affidavit, p. 1). His only objection to the settlement per se is that he cannot tell whether payment will be in cash or warrants. There is no merit to this objection since the notice to stockholders informs them that the total amount of the settlement will be paid in cash.

10. Outside of this objection, Sloan wants the Court to dismiss the complaint, reject the case as a class action (because Javelin stock may trade in the future above $18, to the benefit of those who held their stock) and bar plaintiffs' attorneys from receiving any fee. None of these are matters properly before the Court on the question of approval of a settlement.

11. Sloan claims to have suffered losses of $170,000 from trading in Javelin stock, but since he states he had a short position of 33,400 shares at one time, it would seem that in his trading he was acting not in reliance on Javelin's statements but in disbelief of them.

12. I move that Sloan's objections, if they may be so characterized, be overruled because they are clearly without merit. His charges against my firm are slanderous. He advances no support for these outrageous charges, nor could he, since they are false. They are as reckless as his charges that the Courts have tolerated the practice of barratry. (Memorandum, p. 3) These are the kinds of statements which in a pleading would be subject to a motion to strike under FRCP Rule 12(f).

13. I respectfully request that the various objections which have been raised to the proposed settlement be overruled and the settlement be approved.

BENEDICT WOLF

Sworn to before me this
15th day of October, 1975

NOTARY PUBLIC

GILL WALKER
Notary Public, State of New York
No. 31-4500521 - New York County
Commission Expires March 30, 1977

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GILL WALKER being duly sworn, deposes and says that s he is employed by WOLF POPPER ROSS WOLF & JONES, the attorneys for the above named Plaintiffs

herein. That on the 15th day of October , 1975 s he served the within Additional Affidavit

upon Diamond & Golomb, P.C. and Steptoe & Johnson, attorneys for defendant Canadian Javelin Limited, Moses Krislov and Martin Ozer, attorneys for defendants John C. Doyle and William M. Wismer

the attorneys for the above named defendants

by depositing a true copy of the same, securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 845 Third Avenue, New York, New York, 10022, directed to said attorneys for the parties above named at 99 Park Avenue, New York, N.Y. 10016 1250 Connecticut Avenue, N.W., Washington, D.C. 20036, 800 Engineers Building, Cleveland, Ohio 33114 and 475 Fifth Avenue, New York, N.Y. 10017

those being respectively the addresses within the State designated by them for that purpose upon the preceding papers in this action, or the place where they then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of twenty-one years.

Gill Walker
GILL WALKER

Sworn to before me this 15
day of October , 1975

Margaret M. Falls
Notary Public

MARGANN M. FALLS
Notary Public, State of New York
No. 0-FA4521798
Qualified in Westchester County
Commission Expires March 30, 1976

AFFIDAVIT OF ROGER F. MURRAY DATED OCTOBER 17, 1975 (Pages A171-A174)

Filed in court, October 17, 19

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN LIMITED,

Defendants.

73 Civ. 5117 (MEL)

AFFIDAVIT OF ROGER F. MURRAY

----------X

STATE OF NEW YORK, COUNTY OF NEW YORK) SS.:

ROGER F. MURRAY, being duly sworn, deposes and says:

At approximately 5 P.M. yesterday, there were delivered to me certain papers for my examination. These were an affidavit of H. Douglas Laycock, an affidavit of John D. Mitchell, an affidavit of Hoyt Poynor, and certain print-outs. I have been requested by counsel for defendant Canadian Javelin Limited to examine these and to furnish my response. I have proceeded to do so during the ensuing hours of the evening and night and am dictating this affidavit this morning.

The only instruction I have received from counsel was to analyze this material and to give my reaction. No one has suggested to me any desired conclusion or any analysis of these papers. The material I am now furnishing is purely my own in response to my reading of the papers submitted to me.

1. I have examined the affidavit of H. Douglas Laycock which purports to contain an estimate of possible losses sustained by persons purchasing shares of Canadian Javelin Limited ("CJV")

common stock during the periods from April 30, 1969 through May 31, 1972 and from June 1, 1972 through October 24, 1973 I have been furnished with no information about Mr. Laycock's qualifications for making such an estimate. The document itself shows no evidence that the author is at all knowledgeable in matters of securities markets, common stocks, or the patterns of investor behavior.

2. My specific observations on the methodology applied to this problem are made as follows according to the points as numbered in the Laycock affidavit:

(a) Paragraphs 3,4 and 5 show a complete lack of understanding of the problem. To measure gains and losses in CJV without regard to the market environment is to ignore the principal determinant of those fluctuations in price.

(b) Paragraphs 6 and 7 show no rationale for the "specifications for a model of the trading in CJV common stock". The validity of the model depends, of course, upon the specifications, none of which is supported by either facts relating to CJV or general observation of market and investor behavior. The dates used do not coincide with the periods in question.

(c) Paragraphs 8 and 9 describe a distribution of holding periods for which no basis or evidence exists. The most comprehensive study ever made of individual transactions, dealing with 75,123

"round trips" over a seven-year period provides these decile boundary points:

Decile #	Days
1	10
2	25
3	48
4	78
5	123
6	188
7	274
8	410
9	683

(Note: A decile boundary point means the number of days or less in which one-tenth of the holding periods fell. For example, 20 per cent of the holding periods were 25 days or less; 30 per cent were 78 days or less, etc.)

The mean holding period is 256 days and the median 123 days. The standard deviation of the distribution is 342 days. By contrast, Laycock's second decile boundary point would be about 37 days (vs. 25) but his median of 53 days (vs. 123) shows that he underestimates the short-term activity but overestimates the medium-term holding periods. In short, the hypothetical distribution of holding periods which Laycock gave his model-maker has no foundation or basis in observed experience. Hence, the output of the model cannot be used for any purpose

(d) Paragraphs 10 through 15 reflect only the cumulative result of invalid assumptions, incorrect time periods and a complete ignoring of the

effects of market trends in CJV prices. The same observations apply, of course, to the unsupported and erroneous calculations in paragraphs 16, 17 and 18.

(e) The discussion of Canadian activity is incomplete, lacking in factual support, and can be disregarded. This is contained in paragraphs 19 through 22.

(f) The adjustment for the time period attempted in paragraphs 23 through 25 ignores entirely the market's effects on stocks like CJV during the period in question.

3. Apart from these specific shortcomings, the affidavit ignores the reality that much of the activity in CJV represented trading and short-term buying and selling not giving rise to real changes in ownership. The failure of Laycock to consider actual transfers of shares on the books of the transfer agent as a measure of total U.S. and Canadian investor (as distinguished from trader) transactions is responsible for much of his confusion. (cf. my affidavit, paragraph 16, page 10)

4. On the basis of my examination of the Laycock affidavit and my analysis of the methodology employed, it is my considered opinion that the entire presentation lacks any foundation in fact or experience, does not respond to the questions at issue and contributes nothing to a judgment of the proposed settlement.

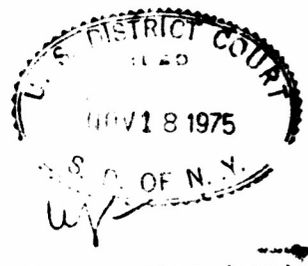
Roger F. Murray
ROGER F. MURRAY

Sworn to before me this
17th day of October, 1975

Irving E. Solomb

IRVING E. SOLOMB
Notary Public, State of New York
No. 60-0585000
Qualified in Westchester County
Term Expires March 30, 1976

AFFIDAVIT OF BENEDICT WOLF DATED NOVEMBER 17, 1975 (Pages A175-A179)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERTRUDE J. BONIME, et al.,

Plaintiffs,

-against-

JOHN C. DOYLE, et al.,

Defendants.

----------x

Index No. 73 Civ. 5117 (MEL)

AFFIDAVIT

STATE OF NEW YORK)
:ss.
COUNTY OF NEW YORK)

BENEDICT WOLF, being duly sworn, deposes and says:

1. I am submitting this affidavit in response to certain statements contained in a lengthy memorandum submitted to this Court by an attorney presuming to speak for persons claiming the status of objectors to the proposed settlement now before the Court.

2. The Court granted the attorneys for the alleged objectors' permission to file papers responding to or analyzing the affidavit and testimony of an expert who appeared in Court at the instance of the proponents of the settlement. The attorneys for the alleged objectors went far beyond what they had been permitted to do by the Court and in the course of their spate of unverified statements, improperly contained in a memorandum rather than in an affidavit, they made certain comments with regard to your deponent which compelled this response.

3. The attorneys for the alleged objectors stated that your deponent refused to read the material submitted by them in the Chicago case in support of their motion for partial summary judgment. The only thing that this statement reveals is that the attorneys for these alleged objectors did not take the trouble to read the material on file with the Court in this case and certainly did not look at the depositions of the witnesses nor the exhibits attached thereto.

4. If these attorneys had taken that elementary step, they would have seen that the agreement upon which they placed such reliance, is plaintiffs' Exhibit # 1 produced at the examination of the witnesses who were deposed by plaintiffs' attorneys, and if they had taken the trouble to read your deponent's affidavit in support of the settlement, they would have seen that all of the material which they had supplied to the State Court in Chicago had been given to plaintiffs' attorneys by the defendants in response to plaintiffs' demand for discovery and had been examined by them.

5. The examination of these documents was conducted by Robert M. Kornreich, Esq. of your deponent's office and was fully reported and discussed by Mr. Kornreich with your deponent prior to the plaintiffs having reached any agreement on terms of settlement.

6. Your deponent stated to the Court at the hearing of this matter that his judgment with regard to the meaning of certain documents and the strengths and weaknesses of plaintiffs' case on the merits and the problems of determining the effects of the misrepresentations and omissions

differed from the view stated at the hearing by the attorneys who represent the alleged objectors. However, upon analysis of the material submitted by these attorneys after the hearing, it appears that their view does not differ greatly with your deponent's evaluation of the case. At the hearing, asserting a damage claim of at least $30,000,000, Mr. Hartunian asked for a settlement of not less than $2,000,000, or 6-2/3% of the claimed damages. The objectors' attorneys in the material recently submitted, while still asserting that recoverable damages are $30,000,000 to $50,000,000, now consider a settlement of $7,500,000 or from 15% to 25% of the damage figure appropriate.

7. Since a settlement must take into account both the merits of a case and possible damages, their willingness to settle first for 6-2/3% and now for 15% to 25% of the asserted damages clearly indicates that they do not really believe that they have a "very, very strong case" (Mr. Plotkin's words), or else they do not take their damage figures seriously.

8. The settlement before the Court amounts to 54% of the damages as calculated by Dr. Murray. But in our settlement considerations, while recognizing both Dr. Murray's expertise and the logic of the basis for his conclusions, we took into account the fact that we were allowing a large cushion in the settlement. A settlement of 25% of the amount of asserted damages (contrasted with the objectors' first percentage of 6-2/3%, and their present percentage range of from 15% to 25%) would have been quite acceptable by the standards customarily used in a case where the proof of

liability would, as here, present considerable difficulties. Thus, we knew that even if we doubled Dr. Murray's estimate of damages, to $5,000,000, the $1,350,000 settlement we are securing would amount to 27%, an acceptable percentage of the possible damages.

9. I respectfully submit that the proposed settlement is fair and adequate and worthy of the Court's approval.

BENEDICT WOLF

Sworn to before me this
17th day of November, 1975

NOTARY PUBLIC

GILL WALKER
Notary Public, State of New York
No. 31-4500761 New York County
Commission Expires March 30, 1977

A178

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GILL WALKER being duly sworn, deposes and says that she is employed by WOLF POPPER ROSS WOLF & JONES, the attorneys for the above named plaintiffs

herein. That on the 17th day of November , 19 75 she served the within Affidavit

upon Steptoe & Johnson, Esqs. and Diamond & Golomb, Esqs., attorneys for defendant Canadian Javelin, Ltd., Moses Krislov, Esq. and Martin Ozer, Esq., attorneys for defendants Doyle and Wismer, Robert Plotkin, Esq., Aram A. Hartunian, Esq. and H. Douglas Laycock, Esq., attorneys for objectors Luries and Einstein

the attorneys for the above named

by depositing a true copy of the same, securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 845 Third Avenue, New York, New York, 10022, directed to said attorneys for the parties above named at 1250 Connecticut Avenue, N.W. Washington, D.C. 20026, 99 Park Avenue, New York, New York 10016, 800 Engineers Building, Cleveland, Ohio 33114, 475 Fifth Avenue, New York, New York, 10017, 33 No. Dearborn St., Chicago, Ill. 60602, 33 No. Dearborn St., Chicago, Ill. 60602 and 600 West 12th Street, Austin Texas 78701
those being respectively the addresses within the State designated by them for that purpose upon the preceding papers in this action, or the place where they then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of twenty-one years.

Gill Walker
GILL WALKER

Sworn to before me this 17th day of November , 19 75

Maryann M. Falls
Notary Public

MARYANN M. FALLS
Notary Public, State of New York
No. 01FA4921793
Qualified in Westchester County
Commission Expires March 30, 1976

SUPPLEMENTARY AFFIDAVIT OF ROGER F. MURRAY
(Pages A180-A190)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs, vs. JOHN C. DOYLE, WILLIAM H. WISMER, CANADIAN JAVELIN LIMITED, Defendants.	)	73 Civ. 5117 (MEL)

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
NOV 26 2 31 PM '75

SUPPLEMENTARY AFFIDAVIT OF
ROGER F. MURRAY

Roger F. Murray, being duly sworn, deposes and says:

1. At the request of counsel for the defendants, I am responding to certain portions of the post-hearing memorandum, submitted by objectors on November 3, 1975. References are to pages of that memorandum.

2. Initially, it should be pointed out that objectors' entire presentation to the Court is predicated upon the theory that "gross losses" must be considered either as the measure of damages in this case or as a principal element of the measure of damages after some discounting. Every proposition that is advanced stems from this fallacious assumption. First, gross loss calculations give no effect whatsoever to the alleged wrongdoing of the defendants. The same calculation (assuming it was properly carried out) could be made as to every publicly traded stock with equally meaningless results. As I will explain later, I attempted to measure possible damages by establishing the existence of aberrational periods of trading and prices in Canadian Javelin Limited ("CJV") stock and

assuming that these aberrational periods were the result of wrongdoing by the defendants. Second, the theory of gross losses as a measure of damages has never in my experience been used in a market-manipulation case. Finally, the absurdity of the theory is demonstrated by the fact that, carried to its logical conclusion, the method could never properly yield a positive measure of damages in as much as gross losses must equal gross gains in the market. There is no known way to separate the winners from the losers without examining the financial statement of each participant in the market. Only if insider trading were involved (and I am advised that it is not in this case) could there be any possible justification for attempting to measure damages arising from market manipulation by calculating gross losses.

3. Objectors criticize my presentation because of my failure to attempt to establish a "true value" for CJV stock. Interestingly, however, no attempt is made anywhere in any of their presentations to establish their variation of CJV's true value, so I cannot understand what they intend to prove with the criticism. Moreover, as I have pointed out and will point out again, this criticism is nothing but a red herring. CJV was actively traded in the market, and it is possible, and indeed proper, to measure possible damages from market prices.

4. The position taken in my October 7 affidavit need not be repeated here. The concept of possible damages is developed on these grounds:

a. The difference between "normal" market prices and aberrational prices affected by announcements and reports issued by CJV can best be calculated by comparing prices at various points in time using stock price averages for the same risk class to separate general effects of the market environment from factors unique to CJV.

BEST COPY AVAILABLE

b. "Manipulated prices," those created by and identified by above-average activity in the marketplace, are presumed to be the result of announcements by CJV. The evidence that such effects on prices have expired is the return, with a subsidence of activity, to a previous typical relationship to the average of prices of stocks in general.

c. The difference between manipulated prices and normal prices of CJV becomes, therefore, the measure of possible damages. Possible losses from purchases made during the periods of activity are estimated on the basis of subsequent prices realized or available to buyers who held their shares for a period of time which exceeded the activity premium periods.

d. Because CJV was actively traded in the marketplace during most of the period, it is possible to measure possible damages from market prices. There was no reason to determine "true" or intrinsic value, which would be relevant for privately owned or closely held shares for which no active market exists.

e. Since there is no need to estimate intrinsic value, market values being readily available, I did not study data related to CJV operations, nor did I analyze the content of announcements and reports by CJV. Rather than speculating on hypothetical measures of the possible impact of different press releases and corrections, I used the specific information provided by the market which reports facts rather than estimates or the fruits of a fertile imagination.

f. Since I attributed <u>all</u> above-average activity to the publicity given to company developments, there may be some overstatement of their impact to the extent that other factors contributed to activity in the stock.

g. On pages 4 and 22-24, the objectors claim that my calculation of possible damages excluded the first eleven or twelve thousand shares of daily trading activity. This is both nonsense and a misrepresentation of my analysis. The excess (above normal) activity multiplied by the excess (above normal) price was calculated simply to show a figure for the activity premium.

h. This was not the basis, however, for calculating damages. For this purpose, I used total reported trading reduced by my estimate of that proportion which should be excluded because it represented in-and-out transactions which did not leave holders in possession of shares after the premium prices were eliminated by the correction of information or the passage of time. My estimate was based upon my intimate knowledge of the significance of price behavior and transactions accumulated in more than forty years as reinforced by the unchallenged reliability of data from the transfer agent regarding the volume of recorded changes in ownership. My estimates are generous because some unknown fraction of the transfers represented gifts, changes in custodians, distributions from estates, etc. not involved in trading activity at all.

5. My affidavit dealt with short-term traders differently for a very good reason: if they entered and left the market during one of the periods of activity premiums, they traded in the same market, the one presumed to be affected by company announcements. Those who suffered the real damages, if any, were those who bought for investment and held until after

the price again retreated to its normal relationship to the market. Since two of the three periods lasted three months and the other two months, it is obvious that short-term traders could bulk large in total activity and be in and out in the zone of premium prices. Whatever impact announcements by CJV may have had was presumably responsible for the premium price in the periods of high activity. Those who bought after the rise can be assumed to have become involved because they were induced by price and volume activity. That is to say, experience shows that "painting the tape" generates interest and participation in speculative stocks like CJV. In any event, if they traded in and out during such periods, they were not damaged by any subsequent changes of information available to the public.

6. Objectors point out correctly (p. 6) that I made no reference to the formula for awarding damages. That formula will operate and be relevant only as members of the class furnish the precise information on their purchases and sales. Obviously such data were not available to me nor were they appropriate for my calculation.

7. Objectors introduce for the first time the concept of "true values" (pp. 9, 11, and Professor Senchack's affidavit pp. 8-10). If by "true value" they refer to "intrinsic value," this is of no concern in this case because we are dealing with a marketable security. My "normal" price is the estimated price consistent with the relationship to the market preceding the appearance of an activity premium and after its disappearance. Normal price may be thought of as the price unaffected by special events, the price determined in the absence of any

temporary influences. This is the best measure of "true value" for the determination of damages in the circumstances. Objectors' repetitive complaint that I did not calculate "true value" is nowhere established as a flaw in my calculation of potential damages. And, as I have indicated, objectors haven't attempted to establish "true value" for their purposes.

8. The fine art of linking together sentences from different contexts is illustrated in the quotation on page 11. A careful reading of the full paragraphs from which the separate sentences are snatched will demonstrate that I equated nothing of the kind and drew no such garbled conclusions. Certainly this is not the "fundamental premise" or the "bedrock" of my estimates. Every alleged failure on my part to take "unique characteristics" into account also is true of their study.

9. The entire body of modern portfolio theory is an elaboration on the simple statement that the risk and return aspects of share ownership can be identified in terms of the systematic market risk plus the diversifiable risk related to any individual company. If, in fact, shares like those of CJV show pronounced temporary departures from the average of similar stocks during a specific period, we are justified in concluding that some special factors are at work. I have assumed that <u>all</u> such disparities are attributable to announcements by the company. If the objectors are arguing that other factors could have been partially responsible, I am quick to agree that I may be overstating the impact of alleged company exaggerations of favorable prospects.

10. In their memorandum (pp. 13-15) and at the hearing, objectors raise questions about why I considered the April 29, 1969 price normal. As I explained at the hearing

(pp. 54-55), my conclusion was based upon a review of prices during the preceding months. I should have referred to volume of trading in addition to price behavior. American Stock Exchange reported volume was 269,900 shares in February, 170,600 shares in March and 221,300 shares in April. In contrast, my "activity premium" months of May and June involved sales of 812,400 and 427,900 shares, respectively. Another approach to answering the question of whether the April 30, 1969 price was "inflated" is to observe whether, in the drastic wiping out of values which culminated in the month of July 1970, CJV dropped more in price than other issues in its class. The results of this comparison follow:

	April 30, 1969	July 1970 Average	Percent Change
Canadian Javelin Ltd.	17.25	8	-53.6
S & P Low Priced Stocks	224.9	99.4	-55.8
Value Line Industrials	181.7	90.8	-50.0

11. This market decline, the sharpest in many years, represented a liquidation of whatever inflation might have existed in a stock like CJV in the previous period. The fact that its decline was merely proportionate to a very large number of other stocks is submitted in support of my judgment that the April 30, 1969 level of prices did not include a component of inflated expectations induced by extravagant promises.

12. Objectors (pp. 20-22), with the support of Professor Senchack's affidavit, favor the Court with a lecture on statistics as a substitute for knowledge and experience

in dealing with stock price behavior. The unstable and meaningless relationship (or lack of one) disclosed by the correlation analysis exercise is irrelevant to the entire study in my opinion. What I am measuring is the size of price differentials in three periods of high trading activity and large changes in transfers. Determining whether or not CJV shares precisely or closely tracked the market each week over such periods of time is a meaningless exercise. The objective of my analysis is to measure the premium added and subsequently eliminated by the market during the periods of time involved in the case.

13. In my affidavit (para. 17) and in my oral statement, I pointed out that prices rose sharply in late 1973 (from 7 1/4 at the end of June to 18 in mid-September). This afforded holders an opportunity to sell, many at excellent recoveries or profits. I did not argue that they were obliged to sell. The fact is that sales of 673,300 shares were made in the month of September alone. Discounting this figure for short-term traders still leaves a substantial quantity of such sales actually made. I was simply observing this fact, which is hardly open to question.

14. In my second affidavit, I offered evidence that the arbitrarily selected holding periods selected by Mr. Laycock have no resemblance to the pattern disclosed in a recent comprehensive study. Of course, I offered no evidence to the effect that this research disclosed the pattern of CJV holding periods because no such evidence exists. I do not even know whether any transactions in CJV happened to be included in the 75,123 studied.

15. The persistence of objectors in tossing about what they represent to be "gross losses," however calculated, contributes nothing to a judgment about the possible liability of the defendants for misrepresentations of material facts. The period involved, the one which I studied, is April 30, 1969 through October 24, 1973. What happened subsequent to the latter date, I am advised by counsel, is not before the Court. Also, it would be essential to take into account the gains.

16. Professor Senchack's affidavit suggests the use of the Barron's Low Priced Stock Index and shows that its range was substantially similar to that of the Value Line Industrial Stock Average and was somewhat less volatile than the Standard & Poor's Low Priced Stock Index. I could have used this index and produced the same results as those found in my first affidavit. However, it would not have added to the background information needed.

17. Professor Senchack's suggestion that the S & P 500 Composite Index is relevant displays a complete ignorance of its characteristics. Because it is value-weighted, corporate giants of great financial strength dominate its behavior. Obviously, these issues are not in the same risk class as CJV. Why there would be merit in including transportation and public utility companies for comparative purposes is not explained. The inappropriateness of measuring CJV relative to the S & P 500 for any purpose whatever is, of course, demonstrated by Senchack's correlation analysis. If that analysis shows anything at all, it is clearly that the indexes I used plus

the Barron's Low Priced Stock Index were suitable for background information as to what was happening in the market to this general class of stock.

18. Since the idle speculation contained in the rest of the Senchack affidavit and his rambling discussion of "true value" and the efficiency of the market do not relate to the question of potential damages, further comment appears unnecessary.

Roger F. Murray

Roger F. Murray

Subscribed and Sworn to before me
this 26 day of November, 1975.

Notary Public

IRVING L. GOLOMB
Notary Public, State of New York
No. 60-6[illegible]300
Qualified in Westchester County
Term Expires March 30, 1976

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Supplementary Affidavit of Roger F. Murray has been served on the following:

Wolf, Popper, Ross, Wolf & Jones
845 Third Avenue
New York, N. Y. 10022
Attorneys for Plaintiffs

Robert Plotkin, Esq.
and
Aram A. Hartunian, Esq.
33 North Dearborn Street
Chicago, Illinois
Attorneys for Objectors

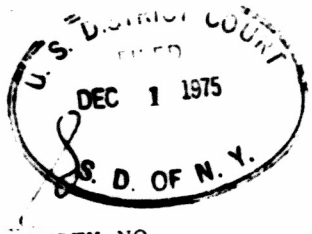
Moses Krislov, Esq.,800 Engineers Bldg.,Cleveland, Ohio
and
Martin Ozer, Esq., 475 Fifth Avenue, New York,N.Y.
Attorneys for Defendants John C. Doyle and
William H. Wismer

on November 26, 1975 by regular U. S. Mail.

Dated: New York, November 26, 1975.

IRVING L. GOLOMB

MOTION OF OBJECTORS FOR LEAVE TO FILE RESPONSE TO THE AFFIDAVIT OF BENEDICT WOLF? MEMO ENDORSEMENT GRANTING MOTION DATED 7/20/76 BY LASKER, J. (Pages A191-A194)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME, et al.,
Plaintiffs

-against-

JOHN C. DOYLE, et al.,
Defendants

INDEX NO.
73 Civ. 5117 (MEL)

MOTION OF OBJECTORS FOR LEAVE TO FILE RESPONSE TO THE AFFIDAVIT OF BENEDICT WOLF

Faye Lurie, H. Haskell Lurie and Sally Einstein, by Robert Plotkin, one of their attorneys, move for leave to file the attached affidavit of Aram A. Hartunian in response to the affidavit of Benedict Wolf.

The affidavit of Mr. Wolf contains allegations in paragraphs 3 and 6 thereof which are contradicted by the transcript of the hearing on settlement held on October 17, 1975.

Robert Plotkin

ROBERT PLOTKIN
One of the Attorneys for
Objectors, Faye Lurie,
H. Haskell Lurie and
Sally Einstein

ROBERT PLOTKIN
Suite 707
33 North Dearborn Street
Chicago, Illinois 60602
Telephone: 312-372-6475

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

PROOF OF SERVICE

Renee L. Role, being first duly sworn, on oath states that she served a copy of the foregoing MOTION OF OBJECTORS FOR LEAVE TO FILE RESPONSE TO THE AFFIDAVIT OF BENEDICT WOLF, together with the Affidavit of Aram A. Hartunian referred to therein, upon

Wolf, Popper, Ross, Wolf & Jones
845 Third Avenue
New York, New York 10022

Diamond & Golomb
99 Park Avenue
New York, New York 10016

Steptoe & Johnson
1250 Connecticut Avenue
Washington, D. C. 20036

Moses Krislov, Esq.
800 Engineers Building
1365 Ontario Avenue
Cleveland, Ohio 44114

Martin Ozer, Esq.
475 Fifth Avenue
New York, New York

Hubachek, Kelly, Rauch & Kirby
3100 Prudential Plaza
Chicago, Illinois 60601

by mailing the same to them prior to 5:00 p.m. on November 25, 1975.

Renee L. Role

SUBSCRIBED AND SWORN TO
before me this 25th day
of November, 1975.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME, et al.,	:	INDEX NO. 73 Civ. 5117 (MEL)
Plaintiffs	:	
-against-	:	
JOHN C. DOYLE, et al.,	:	AFFIDAVIT OF ARAM A. HARTUNIAN
Defendants	:	

STATE OF ILLINOIS)
) ss
COUNTY OF C O O K)

ARAM A. HARTUNIAN, being first duly sworn, on oath deposes and says:

1. The following are true and exact excerpts from the transcript of hearing of the proceedings held in this Court on the hearing on settlement on October 17, 1975.

2. In commenting on the Motion For Partial Summary Judgment filed in the Chicago case (Lurie, et al. v. Canadian Javelin Limited, et al., No. 73 C 3086) and the memoranda filed in support thereof, Mr. Wolf stated to this Court:

> ". . . I don't want to get into the Chicago side of it. If there is a motion for summary judgment which is so clearly to be decided one way in Chicago, God bless them, let them decide it. It has been pending -- I understand the motion was made in December and it is now October and I have not read those papers and I don't intend to." (Emphasis added) Transcript 133

3. At the aforesaid hearing, affiant, when asked by the Court for an opinion regarding what would constitute a fair

settlement of this case, stated:

> ". . . I must say, your Honor, that any settlement in this case of less than $2 million, and I say that to be as conservative as I possibly can, but I think a settlement in this case should be more like $5 million --" (Emphasis added) Transcript 74

As Mr. Wolf himself characterized affiant's statement of what would be a fairer opinion of a proper settlement than the $1,350,000 proposed in this case, Mr. Wolf stated to this Court:

> ". . . the gentleman from Chicago told your Honor when you pressed him, 'Yes, we don't think a settlement of $2 million would do, we would want 5 million' . . . ." Transcript 139

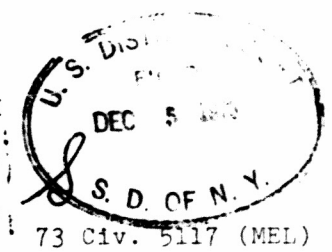
ARAM A. HARTUNIAN

SUBSCRIBED AND SWORN TO
before me this 25th day
of November, 1975.

Carol Retondo
Notary Public

AFFIDAVIT OF BENEDICT WOLF DATED DECEMBER 3, 1975 (Pages A195-A198)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN, LIMITED,

Defendants.

73 Civ. 5117 (MEL)

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

BENEDICT WOLF, being duly sworn, deposes and says:

1. I am a member of the firm of Wolf Popper Ross Wolf & Jones, attorneys for the plaintiffs herein. I submit this affidavit in response to a motion by Robert Plotkin, Esq., which seeks leave to file an affidavit of Aram A. Hartunian, Esq. which was attached thereto.

2. The said motion asserts that there are contradictions between my statements reported in the transcript of the hearing on the proposed settlement and my affidavit of November 17, 1975, and attempts to support this assertion by quoting out of context from the transcript. In emphasizing our position that the Chicago proceedings are immaterial to the motion here to have the settlement approved, I stated that I had not read the Luries' summary judgment motion in the Chicago litigation. I also informed the Court, and reiterate, that the documentary material which was used to support the said

summary judgment motion was not only made available to us in our discovery proceedings, but all portions of this material which we deemed relevant is before this Court as part of our pre-trial record. I might add, incidentally, that while I did not read the Chicago summary judgment motion papers, their contents were made known to me by Robert M. Kornreich, Esq. of my office. The attempt by Objectors to use my statement to give the Court the impression that we proceeded to settlement negotiations without full knowledge of the relevant facts I find most reprehensible.

3. The use of an obvious error in the transcript is even more reprehensible. Mr. Hartunian, in response to the Court's effort to find out what he thought would be an acceptable settlement, talked of a figure of not less than $2 million, stating he was being as conservative as possible in mentioning this figure. My statement, at page 139 of the transcript, referred to Hartunian's response to the Court. What I said was:

> "...the gentleman from Chicago told your Honor when you pressed him, 'Yes, we don't think a settlement of [less than] $2 million would do, we would want 5 million'.." Transcript, page 139 (bracketed portion omitted in transcript)

This mistake in the transcript is clear from the remainder of the sentence, which Mr. Hartunian conveniently omits to quote. The sentence continues as follows:

> ".. but once they use that settlement their 4 to 7 cents becomes 6 to 8 or 6 to 10 cents and if, in fact, this is a very, very strong case, to use their words, [and] the damages are

$30 million, how on earth can they justify coming before your Honor and saying, 'We don't think a settlement of <u>less than</u> $2 million could be justified'? " (bracketed word omitted in transcript)(emphasis mine)

Thus, it is clear that the reporter omitted the words "less than" and from this omission Mr. Hanturian attempts to avoid the impact of his own statement with regard to his dissatisfaction with a settlement of less than $2 million, with its implied approval of a settlement of $2 million.

BENEDICT WOLF

Sworn to before me this
3rd day of December, 1975.

Notary Public

MARYANN M. FALLS
Notary Public, State of New York
No. 01FA4521798
Qualified in Westchester County
Commission Expires March 30, 1976

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ANNE CUBETA, being duly sworn, deposes and says that she is employed by WOLF POPPER ROSS WOLF & JONES, the attorneys for the above named Plaintiffs

herein. That on the 3rd day of December, , 1975 she served the within Affidavit

upon Steptoe & Johnson, Esqs and Diamond & Golomb, Esqs., attorneys for defendant Canadian Javelin, Ltd.; Moses Krislov, Esq. and Martin Ozer, Esq., attorneys for defendants Doyle and Wismer; Robert Plotkin Esq., Aram A. Hartunian, Esq. and H. Douglas Laycock, Esq., attorneys for objectors Luries and Einstein

the attorneys for the above named

by depositing a true copy of the same, securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 845 Third Avenue, New York, New York, 10022, directed to said attorneys for the parties above named at 1250 Connecticut Avenue, N.W., Washington, D.C. 20026; 99 Park Avenue, New York, New York 10016; 800 Engineers Building, Cleveland, Ohio 33114; 475 Fifth Avenue, New York, New York 10017; 33 No. Dearborn Street, Chicago, Illinois 60602; 33 No. Dearborn Street, Chicago, Illinois 60602 and 600 W. 12th Street, Austin, Texas 78701, those being respectively the addresses within the State designated by them for that purpose upon the preceding papers in this action, or the place where they then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of twenty-one years.

Anne Cubeta
Anne Cubeta

Sworn to before me this 3rd day of December, , 1975

Helen Thomas
Notary Public

HELEN THOMAS
Notary Public, State of New York
No. 41-4601
Qualified in Queens County
Commission Expires 3/30/1976

MOTION BY OBJECTORS LURIE ET AL. REQUESTING ORDER DIRECTING CERTAIN INFORMATION BE MADE AVAILABLE TO THE COURT AND TO OBJECTORS; MEMO ENDORSED BY LASKER, J. DENYING MOTION, 7/20/76
(Pages A199-A212)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

- x

73 Civ. 5117 (M.E.L.)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavit of Robert Plotkin, duly sworn to the 1st day of April, 1976, and the exhibits annexed thereto, and on all proceedings heretofore had herein, the undersigned will move this Court at a term for motions, to be held at the U. S. District Court, Southern District of New York, Room 503, on the 20th day of April, 1976, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order (1) directing counsel for the plaintiffs and defendants to file with the Court, and serve on the undersigned, a detailed report of the proofs of claim which have been filed by class members with respect to the proposed settlement; (2) directing counsel for the plaintiffs and defendants to permit the undersigned (or persons working with them) to examine and copy all proofs of claim, requests for exclusion, and correspondenc which have been received from class members by the Court or by

any of such counsel, plus all papers relating thereto; (3) directing counsel for the plaintiffs and defendants to permit the undersigned (or persons working with them) to read and make copies of all depositions taken by any party in this action, and all exhibits thereto; (4) directing counsel for the defendants to file with the Court, and serve on the undersigned, copies of certain criminal charges which have recently been filed against defendant John C. Doyle by Canadian authorities and a statement of all facts pertaining thereto; (5) deferring this Court's ruling on the proposed settlement until after May 1, 1976; and for such other and further relief as may seem just and proper in the premises.

Dated: New York, New York
April 7, 1976

SQUADRON, ELLENOFF & PLESENT
551 Fifth Avenue
New York, New York 10017

By Neal M Golomb

ROBERT PLOTKIN
ARAM A. HARTUNIAN
Suite 4005
55 East Monroe Street
Chicago, Illinois 60603

Attorneys for Objectors
Sally Einstein, Faye Lurie
and H. Haskell Lurie

TO: DIAMOND & GOLOMB
99 Park Avenue
New York, New York 10016
-and-
STEPTOE & JOHNSON
1250 Connecticut Avenue
Washington, D. C. 20036

Attorneys for Defendant
Canadian Javelin Limited

MOSES KRISLOV
800 Engineers Building
1365 Ontario Avenue
Cleveland, Ohio 44114
-and-
MARTIN OZER
475 Fifth Avenue
New York, New York

Attorney for Defendants
John C. Doyle and William M. Wismer

WOLF, POPPER, ROSS, WOLF & JONES
845 Third Avenue
New York, New York 10022

Attorneys for Plaintiffs

A201

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs -against- JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED, Defendants	:	73 Civ. 5117 (MEL) AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

ROBERT PLOTKIN, being duly sworn, deposes and says:

I am one of the attorneys for Faye and H. Haskell Lurie and Sally Einstein, objectors to the proposed settlement of this action which is now under consideration by this Court. I have full knowledge of the facts hereinafter set forth and make this affidavit in support of the instant notice of motion.

1.(a) Under the notice sent to the class of the aforesaid proposed settlement, January 16, 1976 was the last date for class members to file their proofs of claim. The total amount of the claims filed would be determinative of the amount each class member would receive under the proposed

settlement and would also be highly relevant to the disputed issues relating to the total damages suffered by the class. For both of these reasons, the total amount of the claims filed is an important factor to be considered in determining whether the proposed settlement is fair, reasonable and adequate, and these objectors have previously urged the Court to defer ruling until all of the claims have been filed. Although the deadline for filing claims has long since passed, the court docket sheet of this action indicates that as of this writing no tabulation of the filed proofs of claim has been filed with the Court.

(b) By letter dated February 24, 1976 to Michael B. Roche, Chicago counsel for all of the defendants in this action, I stated that,

> "the docket sheet indicates that for months now the claims, requests for exclusion and inquiries [from class members] have been picked up [from the court clerk] under letters from Diamond & Golomb [New York counsel for Canadian Javelin]. I therefore again ask that I be furnished with tabulations of the claims and requests for exclusion containing all relevant data. In addition, I expect to be in New York early next week and would like to examine all of the claims, exclusions and correspondence from class members -- first thing Tuesday morning, March 2. I would appreciate your clearing this for me."
> (Emphasis in original)

I was subsequently informed by telephone by both Mr. Roche and Richard Cunningham of the Washington, D. C., firm of Steptoe & Johnson, also counsel for Canadian Javelin, that no such tabulations had been prepared; and I was given the impression that no plans had been made to prepare any such tabulations. I was also informed by Mr. Roche's letter dated February 27, 1976 (Exhibit I) that I would not be permitted to examine the claims, requests for exclusion or correspondence from class members. That refusal was repeated in a subsequent telephone conversation I had with Mr. Cunningham.

(c) Because of its relevance to the determination of whether the proposed settlement is fair, reasonable and adequate, and because all parties interested in the proposed settlement are entitled to have the information, counsel for the plaintiffs and defendants to this action should be required to file with the Court, and to serve on counsel for the Lurie and Einstein objectors, a detailed report of the proofs of claim which have been received from class members. Such report should include all information which might be relevant for the purposes of this case, and especially in relation to the proposed settlement.

2. I have recently requested counsel for all parties to this action to permit me to read and make copies of all depositions which have been taken in this action. All such

counsel have refused me such permission even though these depositions have been relied upon by the parties to support the proposed settlement and even though any class member (or his counsel) who desires to do so should be permitted to read and copy the depositions and all exhibits thereto. The court docket sheet of this action indicates that none of the depositions have been formally filed with the clerk of court. Only one deposition, a short deposition of a Peter J. LaRush, has been available in the court file.

3. The Wall Street Journal of March 11, 1976 carried an article (Exhibit II) which, inter alia, states as follows:

> "Separately, the Royal Canadian Mounted Police filed a total of 406 fraud charges against John C. Doyle, former chairman of Canadian Javelin's executive committee, and four other persons in connection with trading in the securities of Canadian Javelin and Bison Petroleum [a subsidiary of Canadian Javelin].
>
> "The charges, filed in magistrate's court in Newfoundland, are in addition to two counts each of fraud against Mr. Doyle and the four others last Dec. 31 in connection with trading in the two companies' securities.
>
> "The latest action alleges fraudulent manipulation of transactions in Canadian Javelin and Bison Petroleum securities on the Montreal and Vancouver stock exchanges between Nov. 1, 1974 and Feb. 28, 1975.

"In addition to Mr. Doyle, the four others charged are Charles Hubert Ducharme, a lawyer; Robert Kenneth Glass; Albert A. Furst, and Kieley Daniel Landrigan, a former stockbroker with the St. John's firm of Parsons & Landrigan Ltd.

"Arrest warrants have been issued for the five men, whose current whereabouts are unknown. However, Mr. Doyle is believed to be living in the Bahamas, and the others are believed to be in Central America.

"In April 1975, the police disclosed that they were examining trading in the shares of Canadian Javelin and Bison Petroleum and that a commercial-fraud squad had carried out a number of raids in connection with the investigation. The seizures included documents and correspondence, particularly documents in connection with securities trading. Charges weren't filed, and there weren't any arrests at that time.

"Mr. Doyle is a director of Canadian Javelin and is its largest single shareholder. At last report, he held about 25% of its shares outstanding."

The facts pertaining to these charges are almost certainly relevant to the proposed settlement in this action. In this connection, it is to be noted that defendant Doyle, by reason of his large stockholdings, continues to be in control of Canadian Javelin. Moreover, these criminal charges allege manipulation of trading during a period which includes the reopening of trading on the American Stock Exchange in January 1975. The price at this reopening is relied on by

proponents of the settlement as a fair and unmanipulated price, and is used as a cutoff on recognition of losses in the proposed settlement formula. (Stipulation of Settlement, ¶ 7) The facts pertaining to these charges may well be relevant to the settlement in other ways. But those facts are not known to me, or presumably to other class members who might be interested or, so far as I know, to the Court. Therefore, counsel for the defendants should be required to promptly file with the Court, and serve upon counsel for the Lurie and Einstein objectors, copies of all of the criminal charges referred to in the foregoing article and a statement of all facts pertaining to such charges. To the extent that plaintiffs' counsel possesses any such information, he should be required to file and serve information in the same manner.

4. On March 19, 1976, my associate, John G. Jacobs, was informed by the law clerk to Judge Nathan Cohen of the Circuit Court of Cook County, Illinois, that Judge Cohen intends to render his ruling on Plaintiffs' Motion For Partial Summary Judgment in Lurie v. Canadian Javelin Limited, et al., Case No. 73 CH 7442, no later than May 1, 1976. Because that ruling would be relevant to the proposed settlement in the instant action, it would seem appropriate that this Honorable Court defer its ruling on the proposed settlement until after May 1, 1976.

5. These matters are being brought on by order to show cause rather than by ordinary motion because it is deemed necessary that the Court be advised of these matters, which are of recent occurrence and not presently before the Court, prior to this Court's ruling on the proposed settlement.

6. No prior application for this relief has been made to this Court.

FURTHER AFFIANT SAYETH NOT.

ROBERT PLOTKIN

SUBSCRIBED AND SWORN TO
before me this 1st day
of April, 1976.

Notary Public

LAW OFFICES OF
HUBACHEK, KELLY, RAUCH & KIRBY
A PROFESSIONAL CORPORATION
3100 PRUDENTIAL PLAZA
CHICAGO, ILLINOIS 60601

TELEPHONE 312 644-2400

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HUBGRUKEL

GEORGE W. RAUCH
WILLIAM T. KIRBY
BRUCE L. CARSON
F. B. HUBACHEK, JR.
CHARLES A. KELLY
RICHARD W. BURKE
JAMES T. GRIFFIN
MICHAEL B. ROCHE
THOMAS E. CHOMICZ
RICHARD T. ZWIRNER
ROBERT O. WIENKE

OF COUNSEL
F. B. HUBACHEK
ROGER S. BARRETT

JEFFREY D. WARREN
DAVID M. ALLEN
ROGER J. McFADDEN
STEPHEN A. COHEN
JAMES A. MORRISON
W. THOMAS ROSENOND
JACQUELINE R. SECK
NANCY B. SWING
EDWARD J. LESNIAK
CHRISTOPHER R. HAHN
ADAM M. LUTYNSKI
FRANK T. FOSTER

February 27, 1976

BY MESSENGER

Mr. Robert Plotkin
Suite 707
33 North Dearborn Street
Chicago, Illinois 60602

Re: Bonime v. Canadian Javelin et al.

Dear Bob:

In your letter of February 24, you asked me to see whether arrangements could be made for you to examine "all of the claims, exclusions and correspondence from class members" in the Bonime litigation. You stated that you wished to visit Irving Golomb's office for this purpose on Tuesday morning, March 2.

I relayed your request to Dick Cunningham of Steptoe & Johnson, because he is more familiar than am I with the status of the Bonime case, and because Irving Golomb is out of his office until sometime next week. Dick informs me that he has discussed your inquiry with Mr. Krislov and with counsel for plaintiffs in Bonime. He states that all three counsel are in agreement that they have no authority to permit counsel for one class member to inspect the claims (and related documents) of other class members without an order from the court. He points out that those documents contain personal financial data as to each of the claiming class members, and that they might well object to the disclosure of such information to another member of the class. If you have any further questions on this point, I suggest that you call or write Dick Cunningham.

EXHIBIT I

On page 3 of your letter of February 24, you attribute to me certain statements with respect to the Bonime case. I want to take this opportunity to make the record clear that I never made any of the statements which you attribute to me.

With respect to the other discovery matters mentioned in your February 24 letter, I will discuss them with the other defense counsel and will get back to you.

Very truly yours,

Michael B. Roche

MBR/mn
cc: Richard O. Cunningham
Moses Krislov

Who's News

Management—Personnel Notes

Canadian Javelin Ltd. Elects Smith President In Big Staff Shake-Up

By a WALL STREET JOURNAL Staff Reporter

MONTREAL—Canadian Javelin Ltd., in a major shakeup of its top executive ranks, said Harold W. M. Smith, a director and executive-committee member, was elected president and Thomas A. Dohm, also a director, was elected chairman of the executive committee.

In addition, John A. Rondal, vice president for projects development, was elected vice president of the company; William M. Wismer, president of Bison Petroleum & Minerals Ltd., 62%-owned by Javelin, was elected managing director of the parent; P. J. Desantis, treasurer, was elected secretary-treasurer, and Yves Vincent, assistant secretary.

Canadian Javelin's brief announcement said the new officers were elected at a directors' meeting last Saturday. There wasn't any further explanation, and company officials were unavailable for comment.

Mr. Smith, president of Harold Smith Holdings Ltd., Vineland, Ontario, succeeds Raymond Balestreri. Mr. Dohm, a former president of the Vancouver Stock Exchange, replaces Sarto Fournier.

Was President of Parent

Mr. Wismer was president of Canadian Javelin before resigning to become president of Bison Petroleum.

Separately, the Royal Canadian Mounted Police filed a total of 406 fraud charges against John C. Doyle, former chairman of Canadian Javelin's executive committee, and four other persons in connection with trading in the securities of Canadian Javelin and Bison Petroleum.

The charges, filed in magistrate's court in Newfoundland, are in addition to two counts each of fraud against Mr. Doyle and the four others last Dec. 31 in connection with trading in the two companies' securities.

The latest action alleges fraudulent manipulation of transactions in Canadian Javelin and Bison Petroleum securities on the Montreal and Vancouver stock exchanges between Nov. 1, 1974, and Feb. 28, 1975.

Four Others Charged

In addition to Mr. Doyle, the four others charged are Charles Hubert Ducharme, a lawyer; Robert Kenneth Glass; Albert A. Furst, and Kieley Daniel Landrigan, a former stockbroker with the St. John's firm of Parsons & Landrigan Ltd.

Arrest warrants have been issued for the five men, whose current whereabouts are unknown. However, Mr. Doyle is believed to be living in the Bahamas, and the others are believed to be in Central America.

In April 1975, the police disclosed that they were examining trading in the shares of Canadian Javelin and Bison Petroleum and that a commercial-fraud squad had carried out a number of raids in connection with the investigation. The seizures included documents and correspondence, particularly documents in connection with securities trading. Charges weren't filed, and there weren't any arrests at that time.

Mr. Doyle is a director of Canadian Javelin and is its largest single shareholder. At last report, he held about 29% of its shares outstanding.

president, operations, for General Telephone Co. of the Southwest, another subsidiary, succeeds Leonard Licata, who was named vice president, engineering and network facilities, for GTE Service Corp., a unit of the parent.

CBS Inc. (New York)—James Scott Hill, who will resign as vice president, general counsel and secretary of Liggett & Myers Inc. on April 1, was elected a vice president of this broadcasting concern, which makes records, instruments and toys and publishes textbooks.

American Air Filter Co. (Louisville, Ky.)—Leonard B. Marshall Jr., chairman of United Kentucky Inc., was elected a director.

Tiger International Inc. (Los Angeles)—Martin A. Lynch was named vice-president-treasurer of this airline and equipment leasing and financing holding company. He continues as vice president, finance, for North American Car Corp., the largest member of Tiger Leasing Group, a unit.

Finance

American Security & Trust Co. (Washington, D.C.)—W. Jarvis Moody, president, will also serve as acting chief executive officer pending a meeting of directors, a bank spokesman said. Robert C. Baker, 73-year-old chairman and president, died of unknown natural causes while vacationing in Nassau, the Bahamas.

Harris Bankcorp Inc. (Chicago)—O. C. Davis, president of Peoples Gas Co., Charles M. Bliss, Kent W. Duncan and Theodore H. Roberts, all executive vice presidents of this bank holding company and of Harris Bank, a subsidiary, were elected directors. Mr. Davis fills a vacancy caused by the retirement of Remick McDowell, retired chairman of the executive committee of Peoples Gas Co. Shareholders had approved an increase in board membership to 21 from 18.

Suffolk County Federal Savings & Loan Association (Centereach, N.Y.)—Albert M. Ammerman, president of Suffolk County Community College, was elected a director.

Fred S. James & Co. (Chicago)—John Wallrock, chairman of Minet Holdings Ltd., was elected a director of this risk management and insurance brokerage firm.

EXHIBIT II

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOANNE M. BERTOLDI, being duly sworn, deposes and says:

Deponent is not a party to this action, is over 18 years of age and resides at Forest Hills, New York.

On April 7, 1976, deponent served the within Notice of Motion and Affidavit upon Diamond & Golomb, 99 Park Ave., N.Y., N.Y. 10016 and Steptoe & Johnson, 1250 Connecticut Ave., Washington, D. C. 20036, Attorneys for Defendant Canadian Javelin Limited; Moses Krislov, Esq., 800 Engineers Bldg., 1365 Ontario Ave., Cleveland, Ohio 44114 and Martin Ozer, Esq., 475 Fifth Ave., N.Y., N.Y., Attorneys for Defendants John C. Doyle and William M. Wismer; and Wolf, Popper, Ross, Wolf & Jones, 845 Third Avenue, N.Y., N.Y. 10022, Attorneys for Plaintiffs, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Joanne M. Bertoldi
JOANNE M. BERTOLDI

Sworn to before me this
7th day of April, 1976.

Neal M. Goldman
Notary Public

NEAL M. GOLDMAN
Notary Public, State of New York
No. 24-1406850
Qualified in Kings County
Commission Expires March 30, 1977

A212

AFFIDAVIT OF ROBERT M. KORNREICH DATED APRIL 16, 1976 (Pages A213-A217)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

- - - - - - - - - - - - - - - - - - - -x

73 Civ. 5117 (M.E.L.)

AFFIDAVIT



STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT M. KORNREICH, being duly sworn, deposes and says:

1. I am an attorney with the firm of Wolf Popper Ross Wolf & Jones, attorneys for plaintiffs herein. I submit this affidavit in opposition to the affidavit of Robert Plotkin sworn to April 1, 1976, submitted in support of the motion of Objectors Sally Einstein, Fay Lurie and H. Haskell Lurie to defer this Court's decision on the fairness and adequacy of the proposed settlement and for other relief.

2. The instant motion seeks to delay this Court from ruling on the proposed settlement in the hope that an Illinois Court in a related case (Lurie v. Canadian Javelin Limited (Circuit Court of Cook County, 73 CH 7442)) will rule in favor of Objectors with respect to motions for partial summary judgment made by Objectors and defendants, and it is claimed that this will be relevant to the determination of the plaintiffs' motion to approve the settlement as fair and adequate. Mr. Plotkin, however, fails to point out that all the facts before that Court, and considerably more, including depositions, are in the Record in this case. The strengths and weaknesses of plaintiffs' case can properly be

determined in this action without reference to any other action so that Objectors' attempts to delay this Court's decision cannot be justified.

3. That the instant motion lacks merit and stems from Objectors' private motives to delay this Court's decision is apparent. The proofs of claim in this action have been on file since January 16, 1976, and Mr. Plotkin, the Objectors' counsel, has expressed no desire to inspect or tabulate them until recently, when he expects a decision from the Chicago Court. We submit that the very time-consuming and costly process of tabulating the proofs of claim should not be required now, since the proofs of claim are irrelevant to any estimation of the provable damages in this case and since this question has been fully argued and briefed and can be properly decided upon the present Record. The proofs of claim filed herein reflect only "losses" of the class and do not purport to represent provable damages. Contrary to Mr. Plotkin's contention, the proof of damages in this case would require a showing of a causal connection between the wrongful conduct of defendants and the losses suffered by claimants. Gross losses as reflected in the proofs of claim include market factors unrelated to wrongdoing and therefore have no substantial relationship to the issue of provable damages, which issue is one of the factors to be considered in determining the fairness and adequacy of the proposed settlement. There is ample proof in the present Record that the probable damages are no more than $2-1/2 million. We submit that the present settlement allows a generous margin for error since it represents better than 50% of the probable damages.

4. Objectors also state that the depositions of defendants were not filed with the Court in this case and are not available to them. This baseless contention shows only that they have not read the docket sheet or thoroughly inspected the Court file, even now, many months after they first objected to the

settlement. We have attached a copy of an excerpt of the relevant portion of the docket sheet hereto, which excerpt clearly shows that the depositions and exhibits were filed on August 14, 1975.

5. Finally, the Objectors attempt to have this Court investigate certain unrelated charges of wrongdoing occurring long after the class period in this action. It is obvious that the class herein could not have suffered any provable damages based upon such subsequent conduct. Thus, we do not see how any losses that may be attributable to such conduct and reflected in the cut-off price utilized in the settlement claim formula could be relevant herein.

Robert M. Kornreich
Robert M. Kornreich

Sworn to before me this
16th day of April, 1976.

Arlene L. Plakun
Notary Public

ARLENE L. PLAKUN
Notary Public, State of New York
No. [illegible]
Qualified in New York County
Commission Expires March 30, 1978

73 Civ 5117

LASKER, J

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
7-11-75	Filed Stip & Order that answers of respective defts to the complt be deemed to constitute their answers to the amended complt as well & all material pleaded in amended complt, not contained in the original complt, be deemed denied.....LASKER,J			
8-14-75	Filed Pltff's NOtice to take deposition of Deft. Canadian Javelin Ltd.			
8-14-75	Filed Deposition of Deft. Canadian Javelin Ltd take on 6-30-75. at 11Am			
8-14-75	Filed Deposition of Joch C. Doyle taken on 4-28-75...at 10Am.			
8-14-75	Filed Deposition of Deft. Canadian Javelin Ltd takon on 2-27-75 at 10AM.			
8-14-75	Filed Deposition of Canadian Javelin Ltd taken on on 2-28-75 at 3:10PM.			
8-14-75	Filed Pltff's Echibits 1-25 to Deposition of Deft. Canadian Javelin Ltd.			
8-14-75	Filed Pltff Exhibits 26-34 to deposition of Deft. Canadian Javelin.			
8-14-75	Filed PltffExhibits 35 to Deposition of deft Canadian Javelin.			
8-14-75	Filed Pltff Exhibits 36 - 50 to deposition of deft. " "			
8-14-75	Filed Pltff's " 51-66 " " " " " "			
8-14-75	Filed " " 67 " " " " " "			
8-14-75	Filed " " 67 A - 80 " " " " " "			
8-14-75	Filed " " 81 and 82 " " " " " "			
8-14-75	Filed " " A " " " " " "			
8-14-75	Filed " " B to G " " " " " "			
8-14-75	Filed " " 83-86 " " " " " "			
8-15-75	Filed Stip & Order that signature of Peter J. La Rush of his deposition of 6-30-75, is waived.....LASKER,J			
8-15-75	Filed Stip & Order re signature of John A. Rozzini of his deposition of 2-27-75, & that of John C. Doyle taken 4-28-75 are waived....LASKER,J			
8-26-75	Filed Affdvt & Notice of Appearance By Samuel H. Sloan, as a member of the Class will appear before the Court on 10-17-75 to urge that the court dissapprove of the proposed seettlement of the Class Action.			
8-26-75	Filed Samuel . Sloan's Memo of Law in opposition of the proposed settlement.			
8-27-75	Filed Office Memo from Wolf Popper Ross Wolf & Jones Re: Pick-Up of Claims & Exclusions & Inquires as of this date.....8-27-75 at 3:30PM			
9-3-75	Filed Office Memo from Wolf Popper Ross Wolf & Jones Re: Pick up of Claims & Exclusions & Inquires as of this date....9-3-75.			
9-11-75	Filed Letter from Wolf Popper Ross Wolf & Jones by. Law Clerk Mr. J. Newhouse to Mr. Freeman, Deputy Clerk, Re: of the pick-up of Claims, exclusions & Inquires This date-9-11-75.			
9-24-75	Filed E. I Friedman, member to the class & Ower of Canadian Javelin Stock, NOITCE of Intention to APPEAR at hearing bn 10-17-75 at 9:30 AM Rm 618.			

Continued on Page 5

BEST COPY AVAILABLE

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ARLENE PLAKUN, being duly sworn, deposes and says:

She is employed by WOLF POPPER ROSS WOLF & JONES, the attorneys for the abovenamed plaintiffs herein.

On the 16th day of April, 1976, she served the within Affidavit upon:

Squadron, Ellenoff & Plesent
551 Fifth Avenue
New York, New York 10017

Diamond & Golomb
99 Park Avenue
New York, New York 10016

Robert Plotkin
Aram A. Hartunian
55 East Monroe Street,
Suite 4005
Chicago, Illinois 60603

Attorneys for Objectors
Sally Einstein,
Faye Lurie and
H. Haskell Lurie

Steptoe & Johnson
1250 Connecticut Avenue
Washington, D. C. 20036

Attorneys for Defendant
Canadian Javelin Limited

Moses Krislov
800 Engineers Building
1365 Ontario Avenue
Cleveland, Ohio 44114

Martin Ozer
475 Fifth Avenue
New York, New York 10017

Attorneys for Defendants
John C. Doyle and
William M. Wismer

by depositing a true copy of the same, securely enclosed in a postpaid wrapper, in a post office box regularly maintained by the United States Government at 845 Third Avenue, New York, New York 10022, directed to said attorneys for the parties abovenamed at the addresses abovestated, those being respectively the addresses designated by them for that purpose upon the preceding papers in this action.

Deponent is over the age of 21 years.

Arlene Plakun
Arlene Plakun

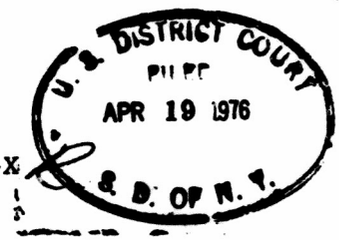
Sworn to before me this
16th day of April, 1976.

Notary Public

ESTELLE BURNS
Notary Public, State of New York
No. 41-0505675
Qualified in Queens County
Commission Expires March 30, 1977

A217

AFFIDAVIT OF IRVING GOLOMB DATED APRIL 16, 1976
(Pages A218-A222)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

- against -

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

----------X

73 Civ. 5117
(M.E.L.)

AFFIDAVIT IN OPPOSITION TO MOTION

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

IRVING J. GOLOMB, being duly sworn, deposes and says:

I am a member of the law firm of DIAMOND & GOLOMB, P.C., attorneys for defendant Canadian Javelin Limited, and make this affidavit in opposition to the broadside motion of objectors Einstein and Lurie for miscellaneous relief.

In essence, the seemingly separate branches of their motion (incidentally supported by a defective affidavit of Robert Plotkin, the copy of which bears no notarial stamp or seal) are unmistakably separate facets of a single new effort, through newly retained New York counsel, to delay and head off this Court's ruling on the pending settlement proposal. Mr. Plotkin's reason for doing so is made apparent by hiscurrent efforts to simultaneously press for favorable rulings in the Chicago courts on his motion therein for class determination, and his cross-motion for partial summary judgment. Thus, Mr. Plotkin attempts to play the two courts against each other, attempting to slow down the one

while he speeds up the other. Clearly, Mr. Plotkin fears that approval of the settlement in this court will work to his detriment in the Chicago cases.

In bringing on the present motion, Mr. Plotkin seeks to take advantage of the fact that this Court, because of the heavy burdens imposed by a crowded calendar, has not yet found the time to conclude a determination herein.

The Court is respectfully urged to decline all the relief requested by the Plotkin motion and not to delay any ruling on the proposed settlement in consequence of the bringing on of said motion. The reasons for denying such relief are variously:

(1) The Plotkin motion violates the provisions of the direction of this Court on November 5, 1975 to the effect that no further papers be filed herein without the prior consent of the Court.

(2) The motion is essentially a harassment of the defendants.

(3) No constructive purpose can be served by the granting of relief such as directing a report to be filed as to the proofs of claim herein.

(4) The contents of the proofs of claim are irrelevant to the question presently before the Court.

(5) The burdensome amount of work which would be required to prepare the report desired by Mr. Plotkin is premature until a settlement has been approved by this Court.

(6) Diligent inspection of the records herein would make available to Mr. Plotkin and his associates copies of the depositions and exhibits which they have apparently taken inadequate steps to inspect; and

(7) No sufficient reason has been given for deferring this Court's ruling on the proposed settlement until after May 1, 1976.

The hearing on the proposed settlement was held in mid-October. On November 5, this Court directed that no further papers

be filed. More than five months later, Mr. Plotkin now makes his present motion, violating the clear directions of the Court and apparently assuming that the Court has forgotten its own ruling. He should not be permitted to take advantage of the fact that only the burden of the Court's work has held up a determination herein. A re-opening of argument at this late date should not be countenanced.

The various forms of relief requested by Mr. Plotkin add up to a clear policy of harassment. The tasks he seeks to have performed by counsel for the proponents of the settlement are burdensome in the extreme. The examination and analysis of the claims would be of no help to the Court in determining a settlement but would only be appropriate in determining the extent of individual losses after a settlement has been approved. Such analysis would have no bearing on the total damages suffered by the class but only on losses suffered by individuals.

No constructive purpose is achievable by the granting of the relief requested. In the present posture of the proofs of claim, the work product of counsel is attached to claims rejected. It would become necessary to separate out all of counsel's comments on the work sheet, detach them from the claims, perform substantial clerical work in so doing at substantial expense, and then re-collate them after an inspection by Mr. Plotkin's associates. In addition, there is a serious question as to whether such financial information as has been furnished by claimants should be subject to inspection by other claimants without prior consent. We respectfully submit that no valid benefit to Mr. Plotkin's position justifies the granting of his request for premature tabula-

tion and report with respect to the thousands of claims filed.

The Plotkin claim that the depositions are not on file herein is erroneous. The Court may recall that at the October 15, 1975 hearing, it was disclosed that neither Mr. Plotkin nor his associates had even checked the records of this court to ascertain what papers were filed therein. Now, a half year later, they repeat the same pattern.

Insofar as the demand for copies of charges against defendant Doyle, these are not shown to have any bearing whatever upon the causes of action herein. I, myself, have not seen such charges and have no personal knowledge of their contents. If any of them give rise to rights on the part of Mr. Plotkin's clients - and there is no evidence that this is so - it could only involve a claim which is no part of the instant action and is utterly irrelevant. The request for such information is frivolous and is a transparent effort to lend color to the balance of an unmeritorious motion.

In conclusion, it is respectfully submitted that no legitimate purpose is served by the demands made by the objectors. On the contrary, they are merely a pretext for delaying ruling on the settlement proposal. We respectfully urge this Court not to permit the timing or content of this Court's ruling to be affected by this motion.

WHEREFORE, it is respectfully requested that the instant motion be denied in its entirety.

IRVING L. GOLOMB

Sworn to before me this
16th day of April, 1976

AARON B. DIAMOND
Notary Public, State of New York
No. 30-6014600
Qualified in Nassau County
Term Expires March 30, 1978

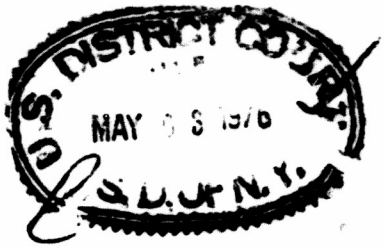
CERTIFICATE OF SERVICE

I hereby certify that a copy of the within affidavit in opposition to motion has been served upon all attorneys appearing in this matter.

Dated: April 16, 1976

AARON M. DIAMOND

ORDER DATED APRIL 30, 1976



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

GERTRUDE J. BONIME and LILLIAN BONIME,

Plaintiffs,

73 Civ. 5117

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

ORDER

Defendants.
----------X

The case has been documented in depth in regard to every contention made by every party or objectant. The court is carefully analyzing all of the voluminous papers which have been heretofore filed including the statistical material. The record is complete in every respect. No further papers shall be filed or profferred to the court for filing.

It is so ordered.

Dated: New York, New York
April 30, 1976.

U.S.D.J.

MAY

MOTION OF OBJECTORS' LURIE ET AL. REQUESTING THE COURT TO WITHDRAW ITS OPINION OF JUNE 30, 1976 AND REQUESTING THE COURT TO VACATE ITS APPROVAL OF THE PROPOSED SETTLEMENT, TO REOPEN HEARING ON SAME; THAT NEITHER PROPOSED FINAL ORDER BE APPROVED; AND THAT VARIOUS DOCUMENTS BE MADE PART OF THE RECORD; ENDORSEMENT BY GOETTEL, J. 8/6/76 DENYING SAME
(Pages A224-A299)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs

-against-

73 Civ. 5117 (M.E.L.)

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants

MOTION OF OBJECTORS FAYE LURIE, H. HASKELL LURIE AND SALLY EINSTEIN THAT (1) THE COURT'S OPINION OF JUNE 30, 1976 BE WITHDRAWN AND VACATED AND THAT THE COURT DISAPPROVE THE PROPOSED SETTLEMENT; (2) IN THE ALTERNATIVE, THAT THE HEARING ON THE SETTLEMENT BE REOPENED AND THAT THE COURT, PRIOR TO RULING ON THE SETTLEMENT, RULE ON THESE OBJECTORS' MULTI-FACETED MOTION FILED IN APRIL, 1976; (3) IN THE FURTHER ALTERNATIVE, THAT NEITHER OF THE PROPOSED ORDERS APPROVING THE SETTLEMENT BE ENTERED WITHOUT SUBSTANTIAL REVISIONS EVEN IF THE SETTLEMENT IS APPROVED; AND (4) THAT VARIOUS DOCUMENTS BE MADE A PART OF THE RECORD IN THIS CASE

Faye Lurie, H. Haskell Lurie and Sally Einstein, objectors to the proposed settlement of this case, hereby move the Court as follows:

1. To withdraw and vacate its Opinion dated June 30, 1976, and to disapprove the proposed settlement.

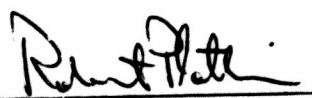
2. In the alternative, to reopen the hearing on the settlement and to rule on these objectors' multi-faceted Motion filed in April, 1976 prior to ruling on the settlement.

3. In the further alternative, that neither of the proposed orders approving the settlement be entered without substantial revisions even if the settlement is approved.

4. That various documents be made a part of the record in this case.

In support of said motions, these objectors rely on the entire record in this case (especially the contentions heretofore asserted and papers heretofore submitted by these objectors)and on the annexed affidavit of Robert Plotkin being submitted concurrently herewith. In order to avoid undue repetition, said affidavit for the most part does not repeat contentions previously asserted by these objectors; these objectors continue to rely and assert all such contentions, even though they are not mentioned in the said affidavit.

(The headings contained in the said affidavit are only for the Court's convenience and are not to be taken as a definitive or comprehensive expression of the contentions asserted in the affidavit.)



ROBERT PLOTKIN
Attorney for Objectors
Faye Lurie, H. Haskell Lurie
and Sally Einstein

ROBERT PLOTKIN
Suite 4005
55 East Monroe Street
Chicago, Illinois 60603
(312) 372-6475

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs

-against-

73 Civ. 5117 (M.E.L.)

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants

AFFIDAVIT OF ROBERT PLOTKIN IN SUPPORT OF MOTION OF OBJECTORS FAYE LURIE, H. HASKELL LURIE AND SALLY EINSTEIN THAT (1) THE COURT'S OPINION OF JUNE 30, 1976 BE WITHDRAWN AND VACATED AND THAT THE COURT DISAPPROVE THE PROPOSED SETTLEMENT; (2) IN THE ALTERNATIVE, THAT THE HEARING ON THE SETTLEMENT BE REOPENED AND THAT THE COURT, PRIOR TO RULING ON THE SETTLEMENT, RULE ON THESE OBJECTORS' MULTI-FACETED MOTION FILED IN APRIL, 1976; (3) IN THE FURTHER ALTERNATIVE, THAT NEITHER OF THE PROPOSED ORDERS APPROVING THE SETTLEMENT BE ENTERED WITHOUT SUBSTANTIAL REVISIONS EVEN IF THE SETTLEMENT IS APPROVED; AND (4) THAT VARIOUS DOCUMENTS BE MADE A PART OF THE RECORD IN THIS CASE

I, Robert Plotkin, being first duly sworn, on oath depose and state as follows:

The Settlement Procedures Here Were Fatally Defective. One of the Consequences Of This Was That Objectors Were Denied An Impartial Hearing.

1. The inherent nature of objecting to a proposed settlement of a class action is such as to place the objector in opposition to the court. The two main reasons for this are

(a) there is a strong interest on the part of the court in disposing of the complex and time-consuming case, and (b) because the court has already given preliminary approval to the proposed settlement before the settlement notice has been sent to the class and before the settlement hearing takes place, when the objector attacks the settlement he often is viewed as attacking the court. These considerations contribute materially to my strong belief that the objectors I represent, and the class as a whole, have been gravely prejudiced by the failure of the Court in this case to follow certain procedures prescribed by the Manual for Complex Litigation and that the failure to follow them constitutes a fatal defect in this proceeding. The grounds for this contention (not including those grounds urged by these objectors in earlier submissions) are set forth in paragraphs 2 through 4 below.

2. Section 1.46 of the Manual contains extensive recommendations as to procedures which should precede the giving of notice of a settlement hearing. It recommends a preliminary hearing at which the court should assure itself preliminarily of the fairness and propriety of the settlement, both as to liability and damages, as well as the negotiations and other procedures which led up to the settlement, and various other relevant facts. The docket sheet for this case contains no indication that these recommended procedures were followed with respect to the settlement involved here; I am aware of

no facts indicating that the procedures were followed.[1/]

3. While some of the reasons for the Manual's recommendations for the preliminary hearing are readily apparent, one of the most important reasons may not be. I refer to the fact that once the notice is sent to the class, a subtle but extremely influential factor comes into play which places in serious doubt the ability of the objector to receive an impartial hearing on his objections. For, once the settlement notice has been sent out, a strong momentum in favor of approving the settlement has been initiated, considerable expense has been incurred in the mailing of notices, etc. Most important, in my view, is the fact that the court has, albeit preliminarily, committed itself to the fairness of the settlement, thus making it difficult for an objector to present his objections in an effective manner without seeming to attack the Court for having preliminarily approved the settlement. By saying this I do not mean to question either the competence or the integrity of courts generally or of this Court in particular.

[1/] While the issues of liability and damages will normally predominate in such a preliminary determination, the importance of the other matters to be looked into, as recommended by Section 1.46, should not be minimized. For example, the section states that, "Among the pertinent inquiries that might be pursued at such a hearing are: *** (5) Did all counsel for all parties participate in the negotiations and, if not, what are the views of the non-participating parties and counsel?" I believe that this inquiry fairly encompasses the question of whether this Court was informed, prior to the time of the submission of the initial papers by these objectors, of the facts of the settlement negotiations which had been carried on with me, including the correspondence exchanged between me and defense counsel in connection therewith. There is no indication in the docket sheet that the Court was so informed; it is my understanding that the Court was not so informed.

However, judges are human beings and, as such, are not immune from the same influences as other human beings experience. Indeed, the influences referred to here are so subtle that a court may very well not be conscious of them and may believe in absolute good faith that no such influences are at work in the particular situation. The critical fact, however, is that there can be no assurance that that is so.

4. While these dangers exist in most class action settlement situations, both the likelihood and potential effect of these pernicious influences being a factor in the Court's attitude and decision were greatly increased by separate but reinforcing defects in the procedures used in this case. Among the consequences was the denial to the objectors of an impartial hearing on their objections. One of these defects consists of the fact that the proposed settlement was submitted to the class as part of the notice which presented class members with their right to opt out. This procedure, too, is impliedly condemned by the Manual. Greatly exacerbating this defect, was the fact that the claim forms were sent out with the settlement notice. Not only does this procedure unfairly influence the class member in making his decision but, in my opinion and in the opinions I have heard expressed by many other lawyers engaged in class action practice, it makes it extremely difficult for a court to disapprove the settlement; the court can hardly be expected to possess the impartiality which is required when thousands of such

forms have been distributed, completed and returned. In such a situation the momentum in favor of approval of the settlement is made almost irresistible.

The Notice And Procedures Here Were Fatally Defective In Other Respects As Well

5. (a) One of the things to be determined at the preliminary hearing is approximately how much each class member will receive under the settlement. This information is not only for the court's use in passing on the settlement preliminarily. Section 1.46 of the Manual expressly states that the notice of a proposed settlement should provide class members "with an estimated range of monetary recovery (e.g., amount per share, per unit, per dollar charged, and the like) that members of the class may expect to receive if the settlement is approved." The same section goes on to emphasize the overriding importance of such information as "the amount of money which will be payable to each member of the class":

> "This information would seem to be essential to making any rational choice whether to remain in the class and accept the benefits of the settlements or to opt out." (§1.46)

However, no such information was included in the notice in this case. This failure is especially important here because it is likely (and was likely when the notice was sent out) that the payment to class members will be quite small.

(b) It would seem to be clear that if this information is "essential to [a class member's] making any rational choice," it is equally essential to a rational

determination by a court as to the fairness of a settlement. Yet, no such information has been presented, notwithstanding that proofs of claim were filed a long time ago and notwithstanding that these objectors have specifically moved the Court to require the submission of such information based on the proofs of claim. In April of 1976 these objectors filed a multi-faceted motion dated April 7, 1976, which included, inter alia, such a request. The Court has never ruled on that motion. On behalf of the Lurie and Einstein objectors, I again ask the Court to rule on and grant all facets of said motion (except for parts (3) and (5) thereof) prior to entering an order approving the proposed settlement.

6. The notice in this case also misled certain class members, in that the notice (p. 3) states that, "Every class member who has sustained a loss from the sale of Javelin stock purchased during the period from April 30, 1969 through October 24, 1973, in excess of profits made on the sale of Javelin stock purchased during the said period will be entitled to a proportionate share of the Fund on the filing of proper Proofs of Claim" — when, in fact, because of the settlement formula, some such class members will receive nothing on their claims and others will receive less than "a proportionate share of the Fund."

Examples of Serious Errors
In The Court's Opinion

7. In paragraphs 1 through 4 hereof, I discussed various factors which operate against objectors to class

action settlements generally and against objectors in this case specifically. Without intending to denigrate the Court in any way, I wish to respectfully state that it may well be that these subtle influences are responsible for important portions of the Court's Opinion which seem inexplicable on any other basis. For example:

A.

> "In support of the somewhat extraordinary assertion about the strength of their case the Luries have submitted almost nothing of probative value." (Opinion 25)

The fact is that Mr. Hartunian sought to introduce all of the papers (briefs, exhibits, etc.)[2/] pertaining to the Luries' motion for partial summary judgment. (Tr. 66-68, 123)

B.

> "Moreover, the failure to include even a scrap of substantive documentary material going to the strenth of the case in their hefty pre-hearing submission, which would have been the appropriate manner to present the argument to this court, created the distinct impression that their offer of proof was more in the nature of a dilatory tactic than a good faith effort to aid the court in its determination. If Plotkin is correct that all material in his Illinois motion is applicable here, the proper course would have been to submit such material in an affidavit in opposition to this settlement." (Opinion 25-26)

2/ This is far different from the statement in the Opinion (p. 25) that Mr. Hartunian was only "prepared to make 'copious' reference to the record in the state case in Illinois, particularly to the motion for partial summary judgment, in speaking to the strengths of the claims in that proceeding." Indeed, it was the Court itself which directed Mr. Hartunian to confine himself to mere references to the Luries' state court case, telling Mr. Hartunian, "don't give me the record in the other case." (Tr. 68)

I respectfully submit that the notice to the class cannot reasonably be interpreted so as to support these statements. The notice states that "any member of the Class may appear and show cause, if any he has, why the proposed settlement should not be approved as fair, reasonable and adequate and why this litigation should not be dismissed on the merits with prejudice, provided that no such person shall be heard and no papers or briefs shall be submitted to the Court, except by special permission of the Court, unless on or before September 29th, 1975, notice of intention to appear and a statement of the basis for objections, together with a memorandum of supporting authorities, are filed with the Court...." (Emphasis added) I believed at the time of our submission of objections, and I continue to believe, that "a statement of the basis for objections" does not require the inclusion of the evidentiary support for the objections. Moreover, our Notice Of Intention To Appear (etc.) included the clear statement that, "At the hearing on the settlement, these objectors will present to the Court the papers which have been filed in connection with Plaintiffs' Motion For Partial Summary Judgment in the Lurie case pending in the Circuit Court of Cook County, Illinois." This supports my statement that this was our belief as to the requirement stated in the notice to the class, and also shows the error of the statement in the Opinion suggesting that "our offer or proof was more in the nature of a dilatory tactic than a good faith effort to aid the Court in its determination." (Opinion 26) Moreover, notwithstanding our forthright statement of intention to

present the papers at the hearing, no one asked us to submit them earlier.

C.

> "Damages are asserted to range from 30 to 50 million dollars...." (Opinion 24)
>
> "Second, we have most carefully studied the material which these objectors have submitted in support of the other half of their claim — that damages in this case are from 30 to 50 million dollars — and have concluded, as discussed below, that the figures are excessive in the extreme." (Opinion 27)

Both the record in this case and the Court's own Opinion show that there is nothing excessive or even questionable about these LOSS figures submitted by the Luries. From the beginning, we made clear that we were measuring gross losses or claims. (See Notice of Intention to Appear At Hearing, p. 7; Tr. 76-78; Post Hearing Memo, p. 8.) No one has denied that gross losses exceed 30 million dollars. Indeed, after impliedly criticizing us (in the foregoing quotations) for asserting such "damage" figures, the Court itself, later in the Opinion, acknowledges that our "calculations are all designed to estimate gross losses to the class...." (Opinion 28; Court's emphasis) The disagreement between the Court and these objectors is over which of several possible measures of damage should be used. We urged a rescissory measure, but pointed out that the Harris measure would yield approximately the same results. (Post Hearing Memo, p. 8;

Second Laycock Affidavit, ¶4.) The Court was sufficiently interested in the Harris measure to ask for calculations addressed especially to it. The reliability and conservativeness of our calculations is indicated by footnote 6 to the Court's Opinion: our estimate of Harris damages was actually smaller than the estimate submitted by the proponents, and all three estimates were in the range of 30 to 50 million dollars.

D.

Perhaps the most important examples of serious errors in the Opinion are found in the Court's use of and reliance on Dr. Murray's testimony and documentary submissions. While numerous other errors could be cited with respect to same, several of them are so important as to require prominent treatment. The first of these has to do with the fact that, while the Opinion's reliance on Dr. Murray is decisive, the Court expressly prohibited Mr. Hartunian from engaging in required cross-examination of Dr. Murray at the hearing. The transcript of the hearing (p. 58) shows that after a short period of cross-examination the Court intervened to bar further cross-examination:

> "THE COURT: I will allow Dr. Murray to answer the question but then I am going to terminate the questioning . . . . I will not convert this hearing into a trial within a trial.
>
> * * *
>
> "THE COURT: . . . . I am not going to permit the hearing to be converted into a trial. I want to know the answer to the question I just asked."

The other errors referred to above are reflected in the following statement:

> ". . . His [Dr. Murray's] adjusted total, after all these calculations, is $2,430,000, a sum which he believes 'fully reflects the losses which might have been sustained by investors who were buying. . . with reference to expected developments and not simply to make a quick turn on the market. (¶ 17 Murray Affidavit, supra)" (Opinion 12-13)

It is respectfully submitted that this critical quotation from Dr. Murray involves two patent errors. The first is the concept implicit in the quotation that only losses "which might have been sustained by investors who were buying. . . with reference to expected developments" are recoverable. Pure and simple, this is the reliance doctrine, which has no application in a case involving the artificial inflation of the market price. See, e.g., Green v. Wolf Corp., 406 F.2d 291, 295 (2nd Cir. 1968), cert. den. 395 U.S. 977 (1969); Blackie v. Barrack, 524 F.2d 891, 906 (9th Cir. 1975); Tucker v. Arthur Andersen & Co., 67 F.R.D. 468, 480 (S.D. N.Y. 1975); Siegel v. Realty Equities Corp., 54 F.R.D. 420, 425 (S.D. N.Y. 1972). The second error is the notion that "investors who were buying. . . simply to make a quick turn on the market" are not entitled to recover. This notion, which is repeated in different words elsewhere in the Opinion (see, e.g., note 8), is directly contrary to the law as expressed by the Second Circuit. In the famous case of S.E.C. v. Texas Gulf Sulphur Co., 401 F.2d

833 (2d Cir. 1968), the Court, in discussing who is legally entitled to the protection of the disclosure laws, stated (at p. 849):

> "The speculators and chartists of Wall and Bay Streets are also 'reasonable' investors entitled to the same legal protection afforded conservative traders."

At The Very Least, The Hearing On The Settlement Should Be Reopened

8. I respectfully submit that, on the basis of the record already made, the proposed settlement should be disapproved, but that if there is any doubt on this score, then the hearing on the settlement should be reopened so as to permit these objectors to adequately cross-examine Dr. Murray (see par. 7.D above) and to present evidence and argument showing (a) that plaintiffs' claims are very strong, (b) that Canadian Javelin's difficulties with the Newfoundland government were not, in the relevant sense, "well-publicized" (Opinion 32),[3/] (c) that the true value of Javelin's stock rarely (if ever) exceeded $3.00 per share during the class period (see Opinion n.5), (d) that the Opinion's references at page 24 to $2 million are grossly misleading, (e) that the Court's reliance on the plaintiffs' and defendants' submissions concerning damages under the Harris case is erroneous, and that these submissions were erroneous in a number of important respects, and (f) concerning various other erroneous aspects of the Opinion. The reopening of the hearing is required by the

---

3/ There is no competent or credible evidence in the record to support this finding by the Court.

fact that the Court has not permitted these objectors adequate opportunity to cross-examine Dr. Murray and to present their evidence and contentions, and has even expressly prohibited these objectors from submitting evidence and other papers. (See, e.g., Exhibits 1 to 5 hereto.)

Additional Objections To The Proposed Orders Submitted By The Plaintiffs and Defendants

9. Both of the proposed orders submitted by the plaintiffs and defendants contain the following additional defects:

(a) The portion of page 2 which reads "and provided further that no objections, papers and briefs should be received and considered unless filed with the Court [etc.]" is erroneous, since no such provision appeared in the notice to the class.

(b) The portion of page 2 which reads "Due proof of giving of such notice in accordance with said Order having been submitted to the Court" is not supported by competent evidence in the record, and there is some reason to believe that the notice was not properly given.

(c) With respect to the first full paragraph on page 3, the Court has not considered "all affidavits, letters and papers submitted to it . . . in opposition to said settlement." Certain papers submitted by these objectors were rejected by the Court and not permitted to be filed.

(d) Paragraph 1 is not supported by the record in this case.

(e) To the extent that paragraphs 4 and 8 limit the awarding of attorneys' fees and expenses to plaintiffs' counsel, they are erroneous. I and the attorneys working with or for me in the representation of the Luries (and their class) and Mrs. Einstein have spent in excess of 1,500 hours, and the Luries have incurred out-of-pocket expenses in excess of $7,000, in the litigation with these defendants. I believe that our efforts have been at least as responsible for causing the defendants to desire to enter into this proposed settlement as any efforts by plaintiffs' counsel. In view of these facts, if I and my co-counsel were to submit a petition for fees and expenses in connection with the instant settlement, in my view we would be entitled to an award of fees and expenses.

(f) With respect to paragraphs 5 and 7, only those persons who actually receive payment on a proof of claim submitted in connection with this settlement should be regarded as being barred.[4/] In this connection, I would point out that the Opinion indicates agreement with certain contentions which these objectors previously asserted, that certain requirements (stated in the notice to the class) for filing objections and for opting out of the class (which said requirements are unauthorized by Rule 23) create burdens which would discourage class members from exercising their rights. (Opinion 20-21)

[4/] Of course, this statement is without prejudice to our basic position that no member of the class should be barred as a result of this settlement.

(g) Paragraph 7 also contains barring language which is overbroad, vague and ambiguous — namely, the words "or might be asserted arising from or relating to the matter."

(h) With respect to paragraph 9, in my view, whether or not the order includes the language of proposed paragraph 9, it will not be a final (and thus appealable) judgment.

With respect to the one paragraph of the two proposed orders which is in dispute between plaintiffs and defendants, paragraph 4, plaintiffs' paragraph 4 is correct and defendants' paragraph 4 is objectionable. Especially in view of the statements made by defense counsel at the hearing on July 23, 1976, it would be error to enter a judgment order which does not require the prompt deposit of the full $1,350,000 in the United States with a person or persons wholly subject to the control of this Court.

Documents To Be Made
A Part of Record

10. The following documents, which, according to a recent reading of the docket sheet of this case, appear not to be a part of the record in this case, should be made a part of the record, since they are important or potentially important in connection with any appeal which may be taken: the Court's letter of November 5, 1975, to Mr. Golomb (Ex. 1); the Court's letter of April 30, 1976, to Mr. Goldman (Ex. 2); Mr. Goldman's letter of May 4, 1976, to the Court (Ex. 3); Mr. Paden's letter of May 6, 1976, to Mr. Goldman (Ex. 4);

the Court's letter of May 26, 1976, to all counsel requesting Harris calculations (Ex. 5); Mr. Mickum's letter of June 11, 1976, to the Court giving the requested Harris calculations (Ex. 6); Mr. Wolf's letter of June 14, 1976, to the Court giving the requested Harris calculations (Ex. 7); REPLY AFFIDAVIT IN SUPPORT OF MOTION OF OBJECTORS FAYE AND H. HASKELL LURIE AND SALLY EINSTEIN (Ex. 8).

FURTHER AFFIANT SAYETH NOT.

Robert Plotkin

ROBERT PLOTKIN

SUBSCRIBED AND SWORN TO
before me this 28th day
of July, 1976.

Evelyn Rosenzweig

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

November 5, 1975

Irving L. Golomb, Esq.
Di mond & Golomb, P.C.
99 Park Avenue
New York, New York 10016

Bonime, et ano v. Canadian Javelin
Limited, et al 73 Civ. 5117

Dear Mr. Golomb:

Under the circumstances accurately described in your letter of November 4th, I am agreeable to extending to November 18th, your time to serve reply papers.

By this letter I am instructing all parties to furnish no papers unless on the specific request of the cour

Very truly yours,

Morris E. Lasker

MEL/cw
cc: Robert Plotkin, Esq.
Moses Krislov, Esq.
Steptoe & Johnson, Esqs.
Martin Ozer, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

April 30, 1976

Neal M. Goldman, Esq.
Squadron, Ellenoff & Plesent, Esqs.
551 Fifth Avenue
New York, New York 10017

Bonime et ano v. John C. Doyle, et al
73 Civ. 5117

Dear Mr. Goldman:

Today Judge Lasker signed an order directing that no further papers shall be filed relating to the fairness of the settlement of the above matter. A copy of the order is enclosed.

This order applies to the proposed reply affidavit submitted by you with your letter of April 28th. Your reply affidavit is returned herewith.

Very truly yours,

Peter R. Paden
Law Clerk to Judge Lasker

PRP/cw
cc: Wolf, Popper, Ross, Wolf & Jones, Esqs.
Diamond & Golomb, P.C.

EXHIBIT 7

SQUADRON, ELLENOFF & PLESENT
551 FIFTH AVENUE
NEW YORK, N.Y.

HOWARD M. SQUADRON
THEODORE ELLENOFF
STANLEY PLESENT
STANLEY I. LEHRER
ALLEN A. STEIN
ARTHUR M. SISKIND
HOWARD B. SOHN
HARVEY HOROWITZ
NEAL M. GOLDMAN
ARTHUR D. STOUT III
ROBERT M. KERRIGAN
HARRIET N. COHEN

COUNSEL
DAVID M. MILLER

CABLE
ESSEELAW

TELEPHONE
(212) 661-6500

May 4, 1976

Honorable Morris E. Lasker
United States District Court
Southern District of New York
U.S. Courthouse
Foley Square
New York, New York 10007

Re: Bonime, et ano. v. John C. Doyle, et al.
73 Civ. 5117

Honorable Sir:

We received your order dated April 30, 1976, relating to the filing of papers in the above-entitled matter, and the letter of your law clerk, Peter R. Paden, returning to us our reply affidavit dated April 28, 1976.

In view of the fact that your order postdated the affidavit by two days and refers to "further papers", we respectfully submit that this affidavit should be included in the record so that if an appeal should be necessary the record may be complete from the point of view of all parties, including the objectants.

In view of the foregoing, we are resubmitting the reply affidavit for your consideration.

Respectfully yours,

Neal M. Goldman

NMG:jb

Enclosure

cc: Wolf, Popper, Ross, Wolf & Jones, Esqs.
Diamond & Golomb, P.C.
[illegible]

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

May 6, 1976

Neal M. Goldman, Esq.
Squadron, Ellenoff & Plesent, Esqs.
551 Fifth Avenue
New York, New York 10017

Bonime, et ano v. John C. Doyle, et al
73 Civ. 5117

Dear Mr. Goldman:

Judge Lasker declines to accept your reoffer of your reply affidavit of April 28, 1976.

Very truly yours,

Peter R. Paden

cc: Wolf, Popper, Ross, Wolf & Jones, Esqs.
Diamond & Golomb, P.C.
Robert Plotkin, Esq.

A245

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

May 26, 1976

TO: Wolf, Popper, Ross, Wolf & Jones, Esqs.
Diamond & Golomb, P.C.
Squadron, Ellenoff & Plesent, Esqs.

RE: Bonime, et al., v. Doyle, et al.,
73 Civ. 5117

Gentlemen:

I have now completed an examination of the voluminous material submitted by proponents and objectors in connection with the proposed settlement. Detailed as the papers are, they nevertheless do not contain any computation of damages to the class calculated according to the method suggested by the Eighth Circuit in Harris v. American Investment Co., 523 F.2d 220 (1975).

Although I recognize that because of factual differences between this case and Harris, the formula there adopted may not be appropriate in every respect to determine reasonable damages in this case, nevertheless it does seem to me that before determining the propriety of the settlement the court should be apprised of the sum which would accrue if damages were based on the difference between the purchase price of the Javelin stock and its price on the first days of trading after full disclosure, that is August 10, 1972 and January 27, 1975. Accordingly, I request that the proponents of the settlement submit such calculations by June 14, 1976 together with such comments as they wish to make on the weight to be given such figures as a factor in determining the fairness of the proposed settlement payment.

Since counsel for the Lurie objectors have stressed the question of calculation of damages, they are invited to submit similar calculations by the same date.

No answering affidavits are requested nor will they be accepted.

In view of the numerosity of purchase dates, the "purchase price" shall be the average monthly price of the stock during the relevant periods. Appropriate assumptions regarding such considerations as average holding periods, in and out trading, etc., may be made so long as they are carefully described in the papers to be submitted.

It is my hope to reach a decision on the pending application as soon after the supplementary material is received as possible.

Very truly yours,

Vincent L. Broderick

MEL/cw

STEPTOE & JOHNSON

ATTORNEYS AT LAW

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GEORGE R. MILLER, III
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JOHN F. NOLAN, JR.
ROBERT O. WALLICK
THOMPSON HAYDEN
WILLIAM P. CONDRELL
RICHARD F. HOLT
TIMOTHY B. ATKESON
HERBERT M. GOODRICH
JAMES P. HOLLIN
HERBERT F. EISENEST
ROBERT F. JORDAN, III
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JAMES H. DUNN, JR.
JAMES L. MCHUGH, JR.
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JAMES P. JACKSON
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LOREN KIEVE
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GEOFFREY C. SHEPARD
MARY JAY SILVERMAN
HOWARD M. STAHL
ROBIN F. WAGNER
OCTAVIA B. WILKINS
MICHAEL R. WYATT

HUBERT A. SCHNEIDER
OF COUNSEL

June 11, 1976

Honorable Morris E. Lasker
Judge, United States District
Court for the Southern District
of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Bonime, et al. v. Doyle, et al.
73 Civ. 511 (MEL)

Dear Judge Lasker:

This will reply to your letter to counsel of May 26, 1976 in the above-captioned case in which, noting that the papers before you do not contain a "computation of damages to the class" made in accordance with the method used by the Eighth Circuit in Harris v. American Investment Co., 523 F.2d 220 (1975), you request such a computation.

Appended hereto as Exhibit A is the computation requested, with appropriate and necessary adjustments for the following: (1) market factors affecting the price of Canadian Javelin Limited ("CJV") stock, which factors are clearly identified; (2) discounting the effect of "in-and-out traders", or short-term buyers and sellers who accounted, according to Dr. Murray, for a high proportion of the active trading above normal volume and an estimated 20% of normal

volume; and (3) discounting purchases of approximately 600,000 shares in July-September 1973 by Noranda Mines and Anglo-American when in possession of inside information. We reach an adjusted damage figure of $12,883,000 under the Harris method in Exhibit A, which must, however, be further discounted for factors which cannot be quantified.

Also appended hereto as Exhibit B is a raw computation under Harris with no adjustments at all. We note that an adjustment for the effect of market factors, in-and-out trades, and insider trades would also be required to the Exhibit B calculations even if no other adjustment were found to be appropriate.

For the reasons explained below, we caution that even the adjusted Harris method figures are deficient in several important respects, as discussed later in this letter. They grossly overstate the number of shares traded and hence damages. In our judgment, they do not provide as accurate or realistic a method of calculating damages as the method employed by our expert, Professor Roger F. Murray, in the papers previously submitted to you. Dr. Murray's calculations resulted in a total estimated damage figure of approximately $2.5 million.

As you have requested, we have applied the Harris method with adjustments in Exhibit A to determine the difference between the price of CJV stock on the benchmark dates you specified and the average price of CJV stock for each month during the class period. In order to eliminate the significant effects of market factors on the price changes, the percentage difference between the Standard & Poor 20 Low-Priced Common Stock Index for each comparable month and the benchmark dates has been calculated. This percentage has been applied to the gain or loss for each month of CJV trading during the class period.

The steps followed in making this Exhibit A calculation in accordance with your instruction are as follows:

1. The average price for each month of trading was established by averaging the highest and lowest price at which CJV stock traded during that month (Column 1, Exhibit A);

2. Then the average level of the Standard & Poor 20 Low-Priced Common Stock Index for each month of trading was determined by taking the monthly averages of weekly indexes provided by Standard & Poor (Column 2);

3. We then determined the percentage gain or decline of the Standard & Poor Index with respect to the first class period (April 30, 1969 - August 10, 1972) by determining the differences between the average level for each month and the benchmark date of August 11, 1972 (first day of trading), and with respect to the second class period (August 11, 1972 - October 24, 1973) by determining the difference between the average level each month and the benchmark date of January 27, 1975 (Column 3);

4. The expected gain or decline of CJV's price caused by the effect of market factors was calculated by applying the same percentage determined from the Standard & Poor 20 Low-Priced Common Stock Index to the CJV price for each month (Column 4);

5. Actual gain or decline of CJV's price for each month was derived as the difference between the average price for each month and the benchmark dates (Column 5);

6. We then determined the difference between the actual and expected gain or loss of CJV's price to isolate the price changes of CJV stock attributable to all factors other than market effects (Column 6). This difference, when applied to the adjusted volume of CJV transactions in each month, yields the gain or loss for each month for all transactions in CJV stock (Column 10);

7. Unadjusted volume of CJV trading is given in Column 7;

8. Volume of CJV trading for each month was first adjusted by application of a discount factor to account for the large number of in-and-out traders who, as testified by Dr. Murray without serious challenge, could not have relied upon any misinformation or lack of information in the marketplace in conducting their transactions in CJV stock. Estimates

of in-and-out trading consistent with Dr. Murray's estimates derived from transfer agent records have been applied in those months characterized by an extraordinary level of activity. In other months a standard estimate of 20% of average normal volume is a conservative estimate for this factor (Column 8);

9. A further adjustment was applied for insider trading for the period July to September 1973, during which approximately 600,000 shares were purchased by Noranda Mines and Anglo-American. Volume of trades was reduced proportionately in each of those months (Column 8);

10. As adjusted for in-and-out trades and insider trades, the volume is given in Column 9;

11. Gains or losses for each month are determined by applying the difference between actual and expected gains or losses (Column 6) to the adjusted volume (Column 9). Total damages are obtained by cumulating the monthly losses (Column 10).

The end result of the above calculation ($12.9 million) is a damage figure that takes some account of market factors, in-and-out trades and insider trades. While this damage figure may be useful for purposes of comparison with other damage figures, it clearly cannot be substituted for the figure established by our expert, based on his detailed analyses which were previously submitted to the Court.

A number of comments concerning the Harris case are, we think, appropriate as they explain our original reluctance to submit such calculations to the Court and our decision to rely upon the expertise of Dr. Murray. Initially, it should be pointed out that both the Murray and Harris approaches are merely substitutes for the detailed and lengthy proofs which would necessarily have to be adduced in the event this case went to trial. Nor do these calculations take into account such issues as reliance and/or causation which would be proper issues at a trial.

It is also important to recognize that the calculation method in Harris is merely a substitute for the theoretically proper calculation of damages. The Eighth Circuit states that the theoretically proper calculation of damages is the difference between the purchase price and the true value of the stock on the date of purchase, together with outlays connected with the transaction. The Harris Court points out that, because it is extremely difficult to determine the true value on the date of purchase where a fraud affecting market value is alleged, an alternative method taking the difference between the purchase price and the price on the first day of trading after disclosure of the fraud may be used. This is the method which we have used here in Exhibit A with appropriate modifications to the extent we are able to quantify them, and without any modifications in Exhibit B.

A very significant factor which the Harris case ignores is the impact of general market conditions which have an effect on all traded stock. While this treatment might be justifiable on the facts of a particular case, it is hardly justifiable here. In this case, changes in CJV's price between April 1969 and October 1973 cannot be viewed in isolation from the market conditions in which they occurred. During this period, the stock market in general experienced some of the worst losses since the crash of 1929. The prices of most stocks during the period fell to extraordinary lows in the absence of any fraud or misrepresentation, and were swept along in the general movements of the market generated by the conditions of the economy. In short, any realistic assessment of true value of CJV stock at any time during the period must account for market conditions. While any index of comparable stocks would have sufficed, we believe the Standard & Poor's 20 Low-Priced Common Stock Index provides a fair basis of comparison to make this determination.

Moreover, the Court in Harris did not of course have to consider the volume of in-and-out trades. Obviously, such a factor is out of place when only the transactions of an individual purchaser are involved. In considering damages to the class, however, in-and-out trades can be, as they are

in the case of Canadian Javelin, a very substantial proportion of the total number of transactions. Based on his review of the transaction data from the transfer agent, Dr. Murray concluded that in-and-out trades accounted for a high proportion of the active trading above average normal volume and an estimated 20% of normal volume. We have applied this discount in Exhibit A.

Another major factor not involved in Harris is insider trading. Purchases of a large number of shares of Canadian Javelin stock were made by persons with inside information during the time involved in the present complaint. Accordingly, it is necessary to discount the Harris calculation for these trades, as has been done in Exhibit A.

There are other factors involved in any calculation of damages to a class which were not considered at all in the Harris Court's approach. Indeed, Harris made no attempt to provide a formula for determining damages to the class. Harris addresses damages only for a single purchaser who bought at a known price at a known time, and sold at a similarly known price at a known time. It provides no guidance for establishing the loss experience of the whole class. Obviously, the dates of purchases, the holding periods, the dates of sale, the profits made and other factors all vitally affect any attempt to calculate damages to an entire class. Needless to say, the absence of any rational basis upon which to calculate such factors puts into serious question the validity of the Harris calculations as applied to class damages, even if other factors can reasonably be assumed.

Further, no single episode was alleged in this case and there can be no claim that every purchaser held onto his CJV stock from the date of purchase until August 11, 1972 or January 27, 1975. Harris does not tell us how to determine what the turnover rate actually was, or what an appropriate assumption as to such a rate would be. A very major factor which, however, is impossible to quantify is the reappearance of the same purchasers and their overall profit and loss experience in multiple transactions. Some indication of the magnitude of the difficulty is illustrated by the fact that the total number of shares traded during the period ended August 10, 1972 was 7.59 million shares and during the period ended October 24, 1973

was 3.58 million. However, the total public float estimated by the Securities & Exchange Commission in its recent action against these defendants totals only about 4.3 million shares. In other words, the total volume traded (using the Harris calculation) for both of the periods exceeded by almost three times the number of shares which could have been purchased and held. Harris does not tell us how to adjust or discount for this factor.1/

In addition, the "fraud on the market" theory advanced both by counsel for the named plaintiffs in this action and by counsel for the Luries and Ms. Einstein is predicated upon the allegation that a continuous plan of misrepresentations and failures to disclose on the part of the defendants artificially inflated the price of the stock from the beginning of the first class period in 1969 through the end of each of the two class periods. This plan or course of conduct, they allege, continuously inflated the price of the stock throughout each class period, so that all persons purchasing the stock during the class period paid inflated prices and all persons selling during the period received inflated prices. Under this theory, it was only after the "truth" was "revealed" at the end of each class period that the inflating effect of the alleged misrepresentations ended so that the stock then sold at its "true value".

If this theory is accepted as the basis of plaintiffs' class action, it follows inevitably that no person who purchased Canadian Javelin stock can claim any injury or loss attributable to defendants' misrepresentations unless he or she held that stock until after the end of the class period during which it was purchased. The reason is obvious: if the

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1/ Mr. Doyle owns 1.32 million shares, none of which can be traded. An additional 750,000 shares underlying convertible debentures could not be traded. A block of approximately 600,000 shares purchased by Noranda Mines and Anglo-American with inside information were not traded. Thus, of the 7.1 million shares Javelin has outstanding, 30 to 40% either could not be or were not publicly traded.

misrepresentations continued to inflate the stock price throughout the class period, then the amount by which the stock price was inflated at the time of purchase would have been offset by the equal or greater inflation of the stock price at the time of resale, provided resale occurred during the class period and thus before "disclosure of the truth."

Application of this "fraud on the market" theory to the task of estimating damage claims which might be asserted in this case is consistent with the method set forth in Harris. Persons who bought in an inflated market and sold in a similarly inflated market before disclosure of the alleged fraud would have suffered no losses attributable to the fraud or even had gains. However, as Dr. Murray's affidavit of October 17, 1975 pointed out at pp. 2-3, there is no way to determine how many purchasers fall in this group. Again, a very substantial discount would have to be applied to the Harris result, but we cannot say what that figure would be.

Finally, the significant impact of other events peculiar to CJV is also ignored in a Harris calculation. Changes in earnings, labor difficulties in Labrador, and announcements by the Province of Newfoundland in anticipation of its expropriation of CJV properties in the Province undoubtedly affected the price of CJV stock on the market. Under Harris losses attributable to alleged wrongdoing for which damages are claimed cannot be separated from these other losses or identified.

Thus, any realistic approach to an estimate of damages in this case must come to grips not only with the in-and-out trades, insider trades, and general market conditions, but also unquantifiable factors including the holding periods, turnover rate and purchase and sale in an inflated market problems upon which Harris gives no guidance whatsoever. In providing an adjusted Harris calculation, we have attempted to account only for factors insofar as they may be quantified. With respect to the others, which certainly are of equal or greater significance to the end result, we can merely caution that large but unknown factors are present which undermine the validity of any application of the Harris

method to the class damages issue.

Dr. Murray's presentation avoids the difficulties of the Harris approach. As indicated in our reply brief filed November 26, 1975, the elements considered in Dr. Murray's approach are indispensable to a proper result in this case.

This conclusion is reinforced by the information available concerning the claims which have been filed in this case. Approximately 4,000 claims have been filed, representing approximately 3 million shares of CJV stock. Of these, roughly 1 million shares are included in claims which have been rejected by the parties. Thus, approximately 2 million shares are represented in valid claims filed in this case, as against more than 11 million trades assumed to have been made in the Harris calculation. Even with adjustments that can be made, therefore, the Harris calculation overstates the number of transactions during the class periods for which valid claims are made by a factor of more than five.

Respectfully submitted,

George B. Mickum III

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EXHIBIT A -- Estimated [illegible] Method as Adjusted for Market Factors, In-and-Out Trading, And Insider Trading

First Class Period	Second Class Period	Two Class Periods Combined
Total Losses:	Total Losses:	Total Losses:
9,946,000	2,937,000	12,883,000

Month	Average Price of CJV	Average Level of Index1/	% Gain or Decline of Index	Expected Gain or Decline of CJV2/	Actual Gain or Decline of CJV3/	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated In-and-Out and Inside Trades	Volume Adjusted for In-and-Out and Inside Trades	Estimated Gain or Loss
5/69	19-1/4 (19.250)	226.0	-37.65%	-7.248	-8-7/8 (8.875)	-1.627	812,400	424,000	388,400	-631,000
6/69	18-1/16 (18.0625)	202.6	-30.45%	-5.500	-7-11/16 (7.6875)	-2.188	427,900	223,000	204,900	-348,000
7/69	14-7/8 (14.875)	180.5	-21.94%	-3.264	-4-1/2 (4.50)	-1.236	228,800	46,000	182,800	-226,000
8/69	14-7/8 (14.875)	169.0	-16.63	-2.474	-4-1/2 (4.50)	-2.026	168,200	34,000	134,200	-272,000
9/69	14	168.7	-16.48	-2.307	-3-5/8 (3.625)	-1.318	123,500	25,000	98,500	-130,000
10/69	14-5/8 (14.625)	176.2	-20.03	-2.929	-4-1/4 (4.250)	-1.321	288,100	58,000	230,100	-304,000
11/69	13-11/16 (13.6875)	179.3	-21.42	-2.932	-3-5/16 (3.3125)	- .381	186,600	37,000	149,600	- 57,000
12/69	13-3/16 (13.1875)	155.0	- 9.10	-1.200	-2-13/16 (2.8125)	-1.613	187,000	37,000	150,000	-242,000
									1969 Losses:	2,310,000

1/ Standard & Poor 20 Low-Priced Common Stock Index.

2/ As compared with Index for week of August 11, 1972 (140.9), and Index for week of January 27, 1975 (78.33) for each class period, respectively.

3/ As compared with CJV closing price on August 11, 1972 (10-3/8), and CJV closing price on January 27, 1975 (7-1/8) for each class period, respectively.

Month	Average Price of CJV	Average Level of Index[1]	% Gain or Decline of Index[2]	Expected Gain or Decline of CJV[3]	Actual Gain or Decline of CJV[3]	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated Inside-Out and Inside Trades	Volume Adjusted for Inside-Out and Insider Trades	Estimated Gain or Loss
1/70	12-3/8 (12.375)	160.7	-12.32%	-1.525	-2	- .475	97,200	19,000	78,200	- 37,000
2/70	12-1/4 (12.250)	153.0	- 7.91	- .969	-1-7/8 (1.875)	- .906	90,000	18,000	72,000	- 65,000
3/70	14-1/16 (14.0625)	154.0	- 8.51	-1.197	-3-11/16 (3.6875)	-2.491	283,600	57,000	226,600	-564,000
4/70	13-7/8 (13.875)	139.1	+ 1.29	+ .179	-3-1/2 (3.50)	-3.679	325,700	73,000	252,700	-930,000
5/70	9-15/16 (9.9375)	111.1	+26.82	+2.665	+7/16 (.4375)	-2.228	230,300	46,000	184,300	-411,000
6/70	9-5/8 (9.875)	111.1	+26.82	+2.648	+3/4 (.75)	-1.898	113,500	23,000	90,500	-172,000
7/70	8	99.41	+41.74	+3.339	+2-3/8 (2.375)	- .964	104,400	21,000	83,400	- 80,000
8/70	8-5/16 (8.3125)	101.9	+38.27	+3.181	+2-1/16 (2.0625)	-1.119	146,000	29,000	117,000	-131,000
9/70	10-7/16 (10.4375)	118.5	+18.90	+1.973	-1/16 (.0625)	-2.036	192,000	39,000	153,000	-313,000

A259

Month	Average Price of CJV	Average Level of Index1/	% Gain or Decline of Index2/	Expected Gain or Decline of CJV3/	Actual Gain or Decline of CJV3/	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated In-and-Out and Inside Trades	Volume Adjusted for In-and-Out and Insider Trades	Estimated Gain or Loss
10/70	11-11/16 (11.6875)	125.4	+12.36	+1.445	-1-5/16 (1.3125)	-2.758	195,300	39,000	156,300	-431,000
11/70	10-1/4 (10.250)	118.8	+18.60	+1.907	+1/8 (.125)	-1.782	100,000	20,000	80,000	-143,000
12/70	10-3/8 (10.375)	122.9	+14.65	+1.520	0	-1.520	94,300	19,000	75,300	-115,000

A260

Month	Average Price of CJV	Average Level of Index1/	% Gain or Decline of Index2/	Expected Gain or Decline of CJV3/	Actual Gain or Decline of CJV3/	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated In-and-Out and Inside Trades	Volume [illegible] Insider Trades	Estimated Gain or Loss
1/71	11-1/4 (11.250)	140.6	+ .21%	+0.024	-7/8 (.875)	-0.899	112,200	22,000	90,200	- 81,000
2/71	13-3/16 (13.1875)	160.9	-12.43%	-1.639	-2-13/16 (2.8125)	-1.174	414,800	118,000	296,800	-348,000
3/71	16-9/16 (16.5625)	164.0	-14.09	-2.334	-6-3/16 (6.1875)	-3.854	416,100	198,000	218,100	-840,000
4/71	15-3/8 (15.375)	166.6	-15.43	-2.372	-5	-2.628	531,300	142,000	389,300	-1,023,000
5/71	14-11/16 (14.6875)	165.1	-14.66	-2.153	-4-5/16 (4.3125)	-2.160	145,700	29,000	116,700	-252,000
6/71	14-3/4 (14.750)	156.2	- 9.80	-1.446	-4-3/8 (4.375)	-2.929	188,600	38,000	150,600	-441,000
7/71	15-1/16 (15.0625)	152.6	- 7.67	-1.155	-4-11/16 (4.6875)	-3.533	180,500	36,000	144,500	-637,000
8/71	13	146.4	- 3.76	- .489	-2-5/8 (2.625)	-2.136	177,900	36,000	141,900	-303,000
9/71	12-13/16 (12.8125)	146.6	- 3.89	- .498	-2-7/16 (2.4375)	-1.940	92,600	19,000	73,600	- 18

A261

Month	Average Price of CJV	Average Level of Index 1/	% Gain or Decline of Index 2/	Expected Gain or Decline of CJV 3/	Actual Gain or Decline of CJV 3/	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated In-and-Out and Inside Trades	Volume Adjusted for In-and-Out and Insider Trades	Estimated Gain or Loss
10/71	11-9/16 (11.5625)	141.0	- 0.07	- .008	-1-3/16 (1.1875)	-1.180	143,900	29,000	114,900	-136,000
11/71	10-1/8 (10.125)	126.7	+11.21	+1.135	+1/4 (.250)	- .885	185,800	37,000	148,800	-132,000
12/71	10	132.4	+ 6.42	+ .642	+3/8 (.375)	- .267	156,200	31,000	125,200	- 33,000
									1971 Losses:	4,284,000

A262

Month	Average Price of CJV	Average Level of Index1/	% Gain or Decline of Index2/	Expected Gain or Decline of CJV3/	Actual Gain or Decline of CJV3/	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated In-and-Out and Inside Trades	Volume of Inside In-and-Out and Inside Trades	Estimated Gain or Loss
1/72	10-3/16 (10.1875)	149.7	- 5.88%	- .599	+3/16 (.1875)	+ .787	206,400	41,000	165,000	+130,000
2/72	9-3/4 (9.750)	156.8	-10.14	- .989	+5/8 (.625)	+1.614	159,800	32,000	127,800	+206,000
3/72	7-7/8 (7.875)	158.8	-11.27	- .888	+2-1/2 (2.5)	+3.388	186,300	37,000	149,300	+506,000
4/72	--	154.3	--	--	--	--	--	--		
5/72	--	145.4	--	--	--	--	--	--		
6/72	--	140.0	--	--	--	--	--	--		
7/72	--	137.7	--	--	--	--	--	--		
8/72	10-5/16 (10.3125)	139.3	-43.77	-4.514	-3-3/16 (3.1875)	+1.327	278,100	56,000	222,100	+295,000
9/72	9-5/16 (9.3125)	132.9	-41.06	-3.824	-2-3/16 (2.1875)	+1.637	146,200	29,000	117,200	+239,000
10/72	9-11/16 (9.6875)	126.5	-38.08	-3.689	-2-9/10 (2.5625)	+1.127	180,700	36,000	144,700	+203,000

A263

Month	Average Price of CJV	Average Level of Index1/	% Gain or Decline of Index2/	Expected Gain or Decline of CJV3/	Actual Gain or Decline of CJV3/	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated In-and-Out and Inside Trades	Values Attributed to In-and-Out and Insider Trades	Estimated Gain or Loss
11/72	9-3/8 (9.375)	129.8	-39.65	-3.717	-2-1/4 (2.250)	+1.467	85,900	17,000	68,900	+101,000
12/72	6-15/16 (6.9375)	129.4	-39.47	-2.738	+3/16 (.1875)	+2.926	270,800	54,000	216,800	+634,356
									1972 Losses:	0

A264

Month	Average Price of CJV	Average Level of Index[1]	% Gain or Decline of Index[2]	Expected Gain or Decline of CJV[3]	Actual Gain or Decline of CJV[3]	Difference Between Actual and Expected Gain or Decline of CJV	Volume of CJV	Estimated In-and-Out and Inside Trades	Volume Attributed to Insider Trades	Estimated Gain or Loss
1/73	7-3/16 (7.1875)	124.8	-37.24%	-2.677	-1/16 (.0625)	+2.615	157,200	31,000	12[illegible],200	+[illegible],000
2/73	7-5/8 (7.625)	114.3	-31.47	-2.400	-1/2 (.500)	+1.900	89,000	18,000	[illegible],000	+[illegible],000
3/73	8-5/8 (8.625)	110.6	-29.18	-2.517	-1-1/2 (1.50)	+1.017	122,600	25,000	[illegible],600	+ [illegible],000
4/73	8-1/8 (8.125)	106.7	-26.59	-2.160	-1	+1.160	80,500	16,000	[illegible],500	+ [illegible],000
5/73	7-7/16 (7.4375)	95.54	-18.01	-1.340	-5/16 (.3125)	+1.028	135,600	27,000	[illegible],600	+112,000
6/73	7-5/8 (7.625)	86.87	- 9.83	- .750	-1/2 (.50)	+ .250	84,300	17,000	[illegible],300	+ [illegible],000
7/73	10-3/4 (10.750)	91.61	-14.50	-1.559	-3-5/8 (3.625)	-2.066	709,900	* 469,900	24[illegible],000	-[illegible],000
8/73	12-13/16 (12.8125)	93.13	-15.89	-2.036	-5-11/16 (5.6875)	-3.652	384,000	* 252,000	13[illegible],000	-[illegible],000
9/73	14-15/16 (14.9375)	95.61	-18.07	-2.699	-7-13/16 (7.8125)	-5.114	673,300	* 445,300	22[illegible],000	-1,[illegible],000
10/73	15-5/16 (15.3125)	104.3	-24.90	-3.813	-8-3/16 (8.1875)	-4.375	183,500	37,000	14[illegible],000	-[illegible],000
									[illegible]	
									Losses: 2,[illegible],000	

* Months in which there are inside traders.

Total all years: 12,[illegible],000

A265

EXHIBIT B -- Estimated Losses Under Harris Method Without Adjustments

First Class Period	Second Class Period	Two Class Periods Combined
Total Losses:	Total Losses:	Total Losses:
27,578,507	13,785,776	41,364,283

266A

›nth	Actual Gain or Decline of CJV	Volume of CJV	Estimated Gains or Losses
69	-8-7/8 (8.875)	812,400	-7,210,050
69	-7-11/16 (7.6875)	427,900	-3,289,481
69	-4-1/2 (4.50)	228,800	-1,029,600
69	-4-1/2 (4.50)	168,200	- 756,900
9	-3-5/8 (3.625)	123,500	- 447,688
/69	-4-1/4 (4.25)	288,100	-1,224,425
/69	-3-5/16 (3.3125)	186,600	- 618,113
/69	-2-13/16 (2.8125)	187,000	- 525,937
		1969 Losses:	15,102,194

267-A

Month	Actual Gain or Decline of CJV	Volume of CJV	Estimated Gain or Loss
1/70	-2	97,200	- 194,400
2/70	-1-7/8 (1.875)	90,000	- 168,750
3/70	-3-11/16 (3.6875)	283,600	-1,045,775
4/70	-3-1/2 (3.50)	325,700	-1,139,950
5/70	+7/16 (.4375)	230,300	+ 100,756
6/70	+3/4 (.75)	113,500	+ 85,125
7/70	+2-3/8 (2.375)	104,400	+ 247,950
8/70	+2-1/16 (2.0625)	146,000	+ 301,125
9/70	-1/16 (.0625)	192,900	- 12,056
10/70	-1-5/16 (1.3125)	195,300	- 256,331
11/70	+1/8 (.125)	100,000	+ 12,500
12/70	0	94,300	0
		1970 Losses:	2,817,262

Month	Actual Gain or Decline of CJV	Volume of CJV	Estimated Gains or Losses
1/71	-7/8 (.875)	112,200	- 98,175
2/71	-2-13/16 (2.8125)	414,800	-1,166,625
3/71	-6-3/16 (6.1875)	416,000	-2,574,619
4/71	-5	531,300	-2,656,500
5/71	-4-5/16 (4.3125)	145,700	- 628,331
6/71	-4-3/8 (4.375)	188,600	- 825,125
7/71	-4-11/16 (4.6875)	180,500	- 846,094
8/71	-2-5/8 (2.625)	177,900	- 466,988
9/71	-2-7/16 (2.4375)	92,600	- 255,713
10/71	-1-3/16 (1.1875)	143,900	- 170,881
11/71	+1/4 (.250)	185,800	+ 46,450
12/71	+3/8 (.375)	156,200	+ 58,575
		1971 Losses:	9,659,051

A269

269A

Month	Actual Gain or Decline of CJV	Volume of CJV	Estimated Gain or Loss
1/72	+3/16 (.1875)	206,400	+ 38,700
2/72	+5/8 (.625)	159,800	+ 99,875
3/72	+2-1/2 (2.5)	186,300	+465,750
4/72	–	–	–
5/72	–	–	–
6/72	–	–	–
7/72	–	–	–
8/72	-3-3/16 (3.1875)	278,100	-886,444
9/72	-2-3/16 (2.1875)	146,200	-319,813
10/72	-2-9/16 (2.5625)	180,700	-463,044
11/72	-2-1/4 (2.250)	85,900	-193,275
12/72	+3/16 (.1875)	270,800	+ 50,775
		1972 Losses:	1,862,576

2704

Month	Actual Gain or Decline of CJV	Volume of CJV	Estimated Gain or Loss
1/73	-1/16 (.0625)	157,200	- 9,825
2/73	-1/2 (.5)	89,000	- 44,500
3/73	-1-1/2 (1.50)	122,600	- 183,900
4/73	-1	80,500	- 80,500
5/73	-5/16 (.3125)	135,600	- 42,375
6/73	-1/2 (.50)	84,300	- 42,150
7/73	-3-5/8 (3.625)	709,900	-2,573,388
8/73	-5-11/16 (5.6875)	384,000	-2,184,000
9/73	-7-13/16 (7.8125)	673,300	-5,260,156
10/73	-8-3/16 (8.1875)	183,500	-1,502,406
		1973 Losses:	11,923,200
		Total Losses:	41,364,283

A271

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CABLE "WOPOROW" NEWYORK

June 14, 1976

Hon. Morris E. Lasker
United States District Court
for the Southern District of New York
United States Court House
New York, New York 10007

Re: Bonime, et al. v. Doyle, et al. (73 Civ. 5117)

Dear Judge Lasker:

We have made a tabulation of the trading in Canadian Javelin stock during the periods between April 30, 1969 and March 3, 1972, when trading was suspended, and between August 10, 1972, when trading was resumed, and October 24, 1973, when trading was again suspended, in response to Your Honor's request for a computation of damages to the class, calculated according to the method suggested by the Eighth Circuit in Harris v. American Investment Co., 523 F.2d 220. The details of the tabulation are attached as Exhibit A hereto.

During the period from April 30, 1969 to March 3, 1972, 7,636,700 shares of Canadian Javelin stock were purchased. Assuming that everyone who purchased stock during that period held his stock until August 10, 1972, the gross difference between the purchase price, based on monthly averages, and the closing price on August 10, 1972 (10-3/8) is $25,855,755. (The assumption of all purchasers holding is of course an impossible one, since the total of shares purchased was almost double the amount of Canadian Javelin stock in the hands of the public, calculated by the SEC to be 4.3 million shares, and was more than the total of the company's outstanding stock.)

During the period from August 10, 1972 to October 24, 1973, 3,591,200 shares of Canadian Javelin stock were purchased. Assuming that all who purchased in that period held their stock until January 27, 1975, the difference between the purchase price, based on monthly averages, and the closing price on January 27, 1975 (7-1/8), when trading was resumed, is $13,781,067.

These figures of $25,855,755 and $13,781,067 are no more than the result of a mechanical application of the method suggested (albeit tentatively) in the Harris case for computation

EXHIBIT 7

of damages to the totally different situation existing in the instant case. They represent neither the losses sustained by those who purchased Canadian Javelin stock within the periods (losses, of course, being simply the difference between the purchase price and a lower sales price, regardless of cause), nor the damages suffered by such purchasers as a result of the misrepresentations of the defendants.

We have referred to the method suggested in the Harris case as tentative because even there, simple as the factual situation was, since it involved one transaction by one purchaser, the Court had difficulty with the question of damages, setting forth two alternatives: the difference between the price paid on purchase and the actual value at that time absent the misrepresentations (which alternative the plaintiff eschewed), and the difference between the price paid on purchase and the market price as of the date of public discovery of the fraud. While the Court gave Harris the right to use the latter alternative at trial, it recognized that he might not be able to "make out a case justifying this rule of damages," in which event he would have the opportunity to use the first alternative and attempt to prove that the actual value of the securities when he bought them was less than the market value he paid for them.

We respectfully submit that the principle for computing damages mentioned in the Harris case should not be applied in the instant case, and the gross figures set forth above, totaling $39,636,822, are not really relevant to the ascertainment of loss to our class. To determine actual losses of those who purchased during either period, it would be necessary to trace each individual purchase to see whether the stock was held until August 10, 1972, in the one case, or until January 27, 1975, in the other, and, if not so held, when it was sold and at what price. If on such sale a loss was involved rather than a profit, it would be necessary to see if the same purchaser engaged in any other purchases and sales of Canadian Javelin stock, on which a profit was made, so that this profit could be offset against the loss. Whatever relevance the Harris rule of damages may have to those situations where purchasers hold their stock until public discovery of a fraud, its inapplicability to situations where many purchasers sold before the public discovery date is clear, as can be seen if we try to apply the Harris formula to three possible purchases of Canadian Javelin stock, of 100 shares each, on July 26, 1973, at $14.00 a share (when the price was at this figure). If one of the purchasers sold his stock in September at $18, and another did not sell before October 24, 1973 and had to hold until January 27, 1975 and the third sold his stock at $14 the day after his purchase, the actual loss suffered by the three purchasers after deduction of profits would be about $300. Yet, under the

Harris rule of damages, the gross loss would be about $2,100, seven times as great.

Not only is the Harris method irrelevant to a determination of losses but it is even less relevant to the establishment of damages, since the latter must involve not just the market price of Canadian Javelin stock when the misrepresentations became publicly known but an attempt to measure the effect of the misrepresentations during the first period on the market price of the stock when trading was resumed on August 10, 1972, more than 3 years after the misrepresentations began, and the effect of the misrepresentations during the second period on the market price of the stock when trading was resumed on January 27, 1975, more than 2-1/2 years after the misrepresentations began.

We have not attempted to estimate how much of the $39,636,822 figure would have to be reduced to take account of profits made as well as of losses sustained by those who purchased and sold during the respective periods, rather than those who held to the end of the periods, nor have we attempted to estimate the effect on the overall figure by the elimination of the in-and-out trades, nor have we sought to analyze the effect of the insider trading during the periods, although the class definition specifically excludes directors, officers and employees of Canadian Javelin and their families, and persons who had access to non-public information (e.g., Noranda Mines, Ltd. and Anglo-American Corp., who bought substantial blocks of stock in the second period).

We have not made these estimates, although they would obviously reduce the gross figure by a huge amount, because it is our belief that the figure showing the difference between the purchase price of all purchases and the price on the resumption of trading dates has no relevance in the determination of damages in the instant case, because so many factors other than the misrepresentations affected the price of Canadian Javelin stock. (We note that in the Harris case the Court would not rule that the measure of damages was the difference between price paid and market price on the date of discovery of the fraud, saying that Harris would have to justify this rule of damages.)

Edward Brodsky, in the New York Law Journal article cited on page 6 of our Reply Memorandum (vol. 174, no. 5, September 3, 1975), said first that the practical problems in determining the value of a publicly traded security where materially false favorable information has been circulated "may be insurmountable" because "it is virtually impossible

to isolate the inflated amount with any degree of accuracy." He then went on to say that using the market price on the date the fraud was publicly discovered as the basis for calculating damages [as in Harris] also creates problems, since in the intervening period a multitude of factors unrelated to the fraud probably affect the market, citing the general market movement as one such factor. He concluded that "it is illogical to isolate the fraud factor and assume that the only reason for a difference in market price after the discovery of the fraud is the fact of the discovery of the fraud."

In Harris, the Court recognized that there would be difficulty in applying as a rule of damages its formula of difference between purchase price and the price on the date of discovery of the fraud, although it permitted Harris to try to justify this damage rule. When we consider the facts in the instant case, we must conclude that what was recognized as difficult in Harris becomes practically impossible here. In addition to the factors that would affect the market price of stocks generally -- interest rates, balance of trade, the strength or weakness of the dollar, the rate of inflation, the rate of unemployment, economic forecasts, Presidental and Congressional policy, the world price of commodities (e.g., copper, particularly affecting Canadian Javelin) -- certain factors peculiar to Canadian Javelin would have to be weighed.

Thus, it would be necessary to try to evaluate the effect on the market price of Canadian Javelin stock of the hostile attitude and acts of the Conservative Government toward the company when the Conservatives ousted the Liberals from power. These were well publicized in the Canadian press and the financial pages of The Wall Street Journal and The New York Times. We must ask then how much of the drop in the price of Canadian Javelin stock, from 21-1/2 in May 1969 to 7-1/8 in March 1972, to the extent this went beyond the drop in the stock market generally, was due to the Conservative Government's publicly announced actions against the company. None of the drop could be ascribed to the public discovery of the fraud, as in Harris, since, first, the company did not issue its corrective statement until May 30, 1972 (and thereafter, when trading resumed, the price was about 3 points higher than when trading had been suspended); and, second, because, while the company itself may not have informed the investing public of what was happening on the Linerboard Project,

all the facts were well covered by the press and thus available to the public.

In our Reply Memorandum, at page 7, we dealt with another problem in attempting to weigh the effect of Canadian Javelin's misrepresentations on the market price of its stock. In its December letter to stockholders (Plaintiffs' Exhibit No. 17 on deposition), the company said that, while it was of the view that it would receive a special exploitation contract, "[a]s in all contract negotiations, there is no certainty as to when or if any exploitation contract will, in fact, be awarded." In our Memorandum, we raised the question of what the effect on the market price would have been if the company had been as forthright as this in its July 1973 announcement of a major copper discovery. If the stock of the company had been traded when the corrective statement was finally made in December, taking this as the date of public discovery of the misrepresentations, would it have dropped from 15 (its price when trading was suspended) to 7-1/8 (its price on January 27, 1975)? How much of this drop was due to the fact that for more than fifteen months stockholders were unable to sell their stock, with the resultant selling pressure when trading reopened? How depressing an effect on the price of the stock was the very suspension of trading?

It was because so many factors in addition to the misrepresentations by Canadian Javelin affected the movement of its stock that we concluded that the only sound method of determining the impact of the misrepresentations on the price of the stock was to compare the market price of Canadian Javelin stock with the market prices of generally similar stocks in the corresponding periods and then isolate the deviations revealed by such comparison. We felt that this method, which was basic to Professor Murray's approach, made more sense than any alternative theory of damages and would give us a reasonably dependable estimate of damages as distinguished from losses, and, while we were not prepared to accept the precise parameters of extra volume trading used by Dr. Murray in his calculations, we felt, as I stated on page 4 of my affidavit of November 7, 1975, that even if we doubled his estimate of $2,500,000 as damages, thus providing for a large margin of error, the proposed settlement was fair and reasonable and should be approved.

Respectfully yours,

Benedict Wolf

BW:ap

RECAPITULATION

	Volume (in Shares)	Difference between Monthly Average and $16.22½
1969	2,366,800	$14,806,081.2
1970	1,973,600	2,106,827.5
1971	2,743,800	9,547,112.3
1972 (1/1-5/31)	553,000	(+) 601,334.
Total For First Period	7,636,700	$25,855,755

	Volume (in Shares)	Difference between Monthly Average and $7.12½
1972 (6/1-12/31)	961,600	$ 1,958,261
1973	2,629,600	11,772,806.2
Total For Second Period	3,591,200	$13,731,067
Total For Both Periods	11,227,900 shares	$39,586,822

EXHIBIT A

1969

	Volume (in Shares)	Monthly Average	Difference between Average and $10.375	Difference x Volume
May	775,200	19.25	8.875	$ 6,879,900
June	427,600	18.0625	7.6875	3,287,175
July	228,800	14.875	4.5	1,029,600
August	168,100	14.875	4.5	756,450
September	123,500	14	3.625	447,687.5
October	289,500	14.8125	4.4375	1,284,656.2
November	186,600	13.6875	3.3125	618,112.5
December	167,500	13.375	3	502,500
Total	2,366,800			$14,806,081.2

1979

	Volume (in Shares)	Monthly Average	Difference between Average and $10.375	Difference x Volume
January	97,400	12.375	2	$ 194,800
February	90,000	12.25	1.875	168,750
March	283,600	14.0625	3.6875	1,045,775
April	325,700	13.875	3.5	1,139,950
May	230,200	9.9375	+ 0.4375	+ 100,712.5
June	113,500	9.625	+ 0.75	+ 85,125
July	104,400	8	+ 2.375	+ 247,950
August	146,000	8.3125	+ 2.0625	+ 301,125
September	193,200	10.4375	0.0625	12,075
October	195,300	11.875	1.5	292,950
November	100,000	10.25	+ 0.125	+ 12,500
December	94,300	10.375	-0-	-0-
Total	1,973,600			$ 2,106,887.5

1971

	Volume (in Shares)	Monthly Average	Difference between Average and $10.375	Difference [illegible]
January	112,200	11.25	0.875	$ 98,175
February	413,700	13.1875	2.8125	1,163,531.2
* March	416,100	16.5625	6.1875	2,574,618.7
April	530,700	15.375	5	2,653,500
May	145,700	14.6875	4.3125	628,331.25
June	186,600	14.75	4.375	825,125
July	180,300	15.0625	4.6875	845,156.25
August	177,900	13	2.625	466,987.5
September	92,600	12.8125	2.4375	225,712.5
October	144,000	11.5625	1.1875	171,000
November	185,800	10.125	+ 0.25	+ 46,450
December	156,200	10	+ 0.375	+ 58,575
Total	2,743,800			$ 9,547,112.3

* Trading suspended from March 15 to April 4.

1972

	Volume (in Shares)	Monthly Average	Difference between Average and $10.375	Difference x Volume
January	206,400	10.1875	+ 0.1875	+ $ 38,700
February	159,800	9.75	+ 0.625	+ 99,875
* March	186,300	7.875	+ 2.5	+ 465,750
Total	552,000			+ $ 604,325

* Trading halted March 7; resumed August 11.

	Volume (in Shares)	Monthly Average	Difference between Average and $7.125	Difference x Volume
August	278,100	10.3125	3.1875	$ 886,343.75
September	146,200	9.4375	2.3125	338,087.5
October	180,700	9.5625	2.4375	440,456.25
November	85,900	9.375	2.25	193,275
December	270,700	7.125	-0-	-0-
Total				$ 1,858,162

1971

	Volume (in Shares)	Monthly Average	Difference between Average and $7.125	Difference x Volume
January	157,200	7.1875	0.0625	$ [illegible]
February	89,000	7.625	0.5	44,500
March	123,100	8.625	1.5	184,650
April	80,500	8.125	1.0	80,500
May	145,600	7.4375	0.3125	45,500
June	84,300	7.625	0.5	42,150
July	709,400	10.75	3.625	2,571,575
August	384,000	12.8125	5.6875	2,184,000
September	673,300	14.9375	7.8125	5,260,156.2
October	163,200	15.3125	8.1875	1,499,950
Total	2,629,600			$11,922,806.2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs -against- JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED, Defendants	73 Civ. 5117 (M.E.L.) REPLY AFFIDAVIT IN SUPPORT OF MOTION OF OBJECTORS FAYE AND H. HASKELL LURIE AND SALLY EINSTEIN

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

ROBERT PLOTKIN, being duly sworn, deposes and says:

I am one of the attorneys for Faye and H. Haskell Lurie and Sally Einstein, objectors to the proposed settlement of this action which is now under consideration by this Court. I have full knowledge of the facts hereinafter set forth and make this affidavit in reply to the affidavits of Robert M. Kornreich and Irving L. Golomb.

1. I will make no attempt herein to reply to every erroneous assertion in the two said opposing affidavits but only to those assertions which seem to require some response.

EXHIBIT 8

2.(a) One of the things sought in the instant motion is an order "directing counsel for the defendants to file with the Court, and serve on the undersigned, copies of certain criminal charges which have recently been filed against John C. Doyle by Canadian authorities and a statement of all facts pertaining thereto." The reasons for this request are set forth in paragraph 3 of my initial affidavit. That paragraph includes the statement that, "To the extent that plaintiffs' counsel possesses any such information, he should be required to file and serve information in the same manner." The affidavits of Messrs. Golomb and Kornreich are not really responsive and seek to slough off this serious matter without even disclosing what those charges involve. (See, e.g., page 4 of Golomb affidavit and paragraph 5 of Kornreich affidavit.)

(b) It may be that the reason for the said unresponsiveness was an awareness that defendant John C. Doyle -- who, as pointed out in my initial affidavit (without contradiction in the Golomb and Kornreich affidavits), "by reason of his large stockholdings, continues to be in control of Canadian Javelin" -- was about to be sued again by the SEC for manipulating the

price of Canadian Javelin stock on the American Stock Exchange and on exchanges in Canada. For the fact is that today's (April 27, 1976) Wall Street Journal carries the following article announcing such a suit:

2 THE WALL STREET JOURNAL
Tuesday, April 27, 1976

Canadian Javelin's Doyle Is Named In New SEC Suit

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—The founder of Canadian Javelin Ltd., who has been the target of several previous law enforcement actions by U.S. and Canadian authorities, has been named in a new complaint by the Securities and Exchange Commission.

The SEC accused John C. Doyle of participating in a scheme to manipulate the price of Canadian Javelin common stock on the American Stock Exchange and on exchanges in Canada.

The new suit asks that the defendants be enjoined from a variety of federal securities-law violations, but in Mr. Doyle's case, it would appear largely technical. Currently believed to be a resident of the Bahamas, Mr. Doyle has yet to serve a three-month jail sentence imposed by a U.S. district judge more than 10 years ago after he pleaded guilty to criminal charges of selling unregistered Canadian Javelin shares.

Mr. Doyle also has been enjoined from federal securities law violations by past federal court orders and currently has two Canadian criminal actions pending against him. The most recent Canadian charges, filed in January, also named four associates accused in the new SEC complaint—Robert K. Glass, Hubert Ducharme and Albert A. Furta, all residents of Panama, and Kiely Landrigan of St. Johns, Newfoundland.

3. The first two parts of the instant motion request the Court to enter "an order (1) directing counsel for the plaintiffs and defendants to file with the Court, and serve on the undersigned, a detailed report of the proofs of claim which have been filed by class members with respect to the proposed settlement" and "(2) directing counsel for the plaintiffs and defendants to permit the undersigned (or persons working with them) to examine and copy all proofs of claim, requests for exclusion, and correspondence which have been received from class members by the Court or by any of such counsel, plus all papers relating thereto." Both Mr. Golomb's and Mr. Kornreich's affidavits take the position that the proofs of claim are irrelevant. Mr. Golomb states, for example, that,

> "(3) No constructive purpose can be served by the granting of relief such as directing a report to be filed as to the proofs of claim herein.
>
> "(4) The contents of the proofs of claim are irrelevant to the question presently before the Court."

The position asserted by Messrs. Golomb and Kornreich is entirely incorrect. In my initial affidavit (¶ 1(a)) I stated:

" ... The total amount of the claims filed would be determinative of the amount each class member would receive under the proposed settlement and would also be highly relevant to the disputed issues relating to the total damages suffered by the class. For both of these reasons, the total amount of the claims filed is an important factor to be considered in determining whether the proposed settlement is fair, reasonable and adequate ... "

It is difficult to conceive of how this can be denied. Insofar as the class member is concerned, clearly the most important fact concerning a proposed settlement is how much he can expect to receive under it. The Manual For Complex Litigation, e.g., states that the notice of a proposed settlement should provide class members "with an estimated range of monetary recovery (e.g., amount per share, per unit, per dollar charged, and the like) that members of the class may expect to receive if the settlement is approved." (Sec. 1.46) (In the case at bar, not only did the notice fail to contain such information, it was actually misleading on the subject. This is just one of the many reasons why the notice was fatally defective.)

Logic indicates that if the amount of the claims was such as to enhance the proposed settlement by establishing that each class member would receive payment of a respectable percentage of his claim, the parties would have promptly bought to the attention of the Court the claims facts which those objectors are seeking to have bought to the attention of the Court. This is especially so given the nature of the attack which those objectors have made on the proposed settlement as being woefully inadequate. By the same reasoning, the fact that the parties have brought no such facts to the attention of the Court and are resisting doing so can be taken as an indication that those facts reflect unfavorably on the proposed settlement.

4. Mr. Kornreich, one of the attorneys for the plaintiffs, states in his affidavit (¶3) that the motion "stems from Objectors' private motives to delay this Court's decision . . . " Continuing, in the same paragraph, Mr. Kornreich then states:

> "The proofs of claim in this action have been on file since January 16, 1976, and Mr. Plotkin, the Objectors' counsel, has expressed no desire to inspect or tabulate them until recently, when he expects a decision from the Chicago court."

The portion of this quotation concerning me is entirely untrue, and I am truly flabbergasted that Mr. Kornreich would make such a statement. The facts are that I asked counsel for the opportunity to inspect the claims at the end of January. (See penultimate paragraph of Exhibit A annexed hereto, which is a copy of my letter of February 24, 1976 to Michael Roche, Chicago counsel for all of the defendants herein.) Moreover, on March 2, 1976, I met with Mr. Kornreich and his partner, Benjamin Wolf, in Mr. Wolf's office in New York City. At that time I again asked to be permitted to inspect the claims, and was refused.

5. Also unresponsive are the positions asserted in the Kornreich and Golomb affidavits in answer to our motion that this Court defer ruling on the proposed settlement until after May 1, 1976, the date by which Judge Nathan Cohen of the Circuit Court of Cook County, Illinois, has indicated he will rule on Plaintiffs' Motion For Partial Summary Judgment in the Lurie case. My initial affidavit (¶4) pointed out that, "Because that ruling would be relevant to the proposed settlement in the instant action, it would seem appropriate that this Honorable Court defer its ruling on the proposed settlement until after May 1, 1976." The utter unresponsiveness of the two opposing affidavits is shown by the fact that neither of the affidavits sets forth a single reason why it would not be appropriate for this Court to defer its ruling as requested.

6. At page 3 of Mr. Golomb's affidavit, he accuses me of "violating the clear directions of the Court [referring to the Court's letter of November 5, 1975] and apparently assuming that the Court has forgotten its own ruling." That certainly was not my intention. It never occurred to me that this Court intended by its said letter to prohibit the raising of the matters which are raised in the instant motion. That the Court had no such

intention would seem to be shown by the discussion with the Court which is indicated in Exhibit B annexed hereto, Neal M. Goldman's letter to the court clerk.

7. (a) One sentence in my initial affidavit is incorrect, and I apologize to the Court and counsel for the error. I refer to the sentence in paragraph 2 which states, "The court docket sheet of this action indicates that none of the depositions [taken in this action] have been formally filed with the clerk of court." The error was due to an oversight on my part in reading the docket sheet. However, the fact is that at the time I prepared my initial affidavit, only one deposition (Peter J. LaRush) was available in the court files (or in the chambers of this Court), according to information conveyed to me by personnel of a New York City clerical agency employed by me. Those personnel informed my office late last week that <u>now</u> three depositions are in the court files (LaRush, Golomb and a Mr. Rozzini) but that (a) the deposition of defendant Doyle, shown on the docket sheet as having been filed, is not in the court files and (b) a number of the filed exhibits to these depositions are photocopies which are very difficult to read.

(b) The real question, it seems to me, is why counsel for the parties should refuse, as they have, to furnish me copies of the depositions and exhibits at my expense, as I have requested. The most recent refusal was by Mr. Wolf, counsel for plaintiffs in this action. During my meeting with Mr. Wolf on March 2, 1976, which is referred to above, I asked him for this, explaining that the depositions were not in the court files. He said he would think about my request and get back to me. On March 8, 1976, Mr. Wolf telephoned me to say that he would not give me the depositions. A copy of my contemporaneous handwritten memo of that conversation is appended hereto as Exhibit C.

FURTHER AFFIANT SAYETH NOT.

ROBERT PLOTKIN

SUBSCRIBED AND SWORN TO
before me this 27th day
of April, 1976.

Notary Public

ROBERT PLOTKIN

LAW OFFICE

33 NORTH DEARBORN STREET
CHICAGO, ILLINOIS 60602

(312) 372-6475

February 24, 1976

BY MESSENGER

Michael B. Roche, Esq.
Hubachek, Kelly, Rauch & Kirby
3100 Prudential Plaza
Chicago, Illinois 60601

Re: Lurie v. Canadian Javelin Limited et al.

Dear Mike:

Now that the defendants have filed their Answer to the Amended Complaint (we received the Answer last Thursday), it is appropriate to move forward with our federal action. Accordingly, enclosed is a copy of plaintiffs' Motion For Class Certification, which we filed today. Our supporting memorandum will be filed within the time provided by the rules.

Also, the depositions should move forward without undue delay. In this connection, I was disappointed by your letter of February 18, which states that the month of March is out because George Mickum is unavailable. I had been hoping to start the depositions in March. I suggest that Irving Golomb's deposition be taken in New York City beginning at 10:00 a.m. on Wednesday, April 7. I anticipate that we will need at least three days for the deposition, so I suggest that we count on using April 7, 8 and 9 for the deposition, with an understanding that if more time is required the deposition will be adjourned at the end of Friday, April 9, and recommenced at a future, near date.

Another deposition we will want to take, of course, is John A. Rozzini. I assume that his deposition will be taken in

EXHIBIT A

Montreal. In this connection, I might mention that when I last spoke with George Mickum he suggested that the Montreal depositions be taken at CJV's headquarters. I presently have no objection to that insofar as Mr. Rozzini's deposition is concerned.

We will want to take other depositions, but it will be a while before I know who we will want to depose.

There are some questions concerning documents which should be dealt with:

1. Mr. Mickum indicated to me some time ago that his firm has some documents which are within the scope of our requests for production but which have not been produced. It would be most convenient if they could be made available for inspection in Chicago, but they can be inspected in Washington if that is desired. If inspected in Washington, the inspection should be combined with a deposition of Mr. Mickum, since his deposition will have to be taken at some point anyway.

2. It seems to me that Mr. Golomb must be in possession of documents within the scope of our requests which have not been produced. Since he is a CJV attorney, we are certainly entitled to the documents.

3. Please let me know if anyone on your side of the case has any documents returned by the RCMP which we have not inspected. If there are, please let me know so that we can make arrangements to inspect them at your offices.

4. I have previously asked for copies of the depositions taken in the Bonnie case. In all of the circumstances, I do not see how these can be denied me; we should not have to take the matter up with the Court.

On a somewhat different plane, you will recall that when I spoke with you at the end of January, you told me that the attorneys in the Bonime case had nothing to do with the claims and requests for exclusion which have been submitted. You said something about the court clerk's office and a special master handling such matters in that court. However, I have checked and that is not accurate. Furthermore, the docket sheet indicates that for months now the claims, requests for exclusion and inquiries have been picked up under letters from Diamond & Golomb. I therefore again ask that I be furnished with tabulations of the claims and requests for exclusion containing all relevant data. In addition, I expect to be in New York early next week and would like to examine all of the claims, exclusions and correspondence from class members -- first thing Tuesday morning, March 2. I would appreciate your clearing this for me.

Let me hear from you as soon as possible.

Sincerely,

Robert Plotkin

RP:rr

Enclosure

P. S. I would suggest that Mr. Rozzini's deposition be scheduled two or three weeks after Mr. Golomb's deposition.

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COUNSEL
DAVID MILLER

CABLE
ESQUELAW

TELEPHONE
(212) 661-6500

April 7, 1976

Clerk
United States District Court
Southern District of New York
U. S. Courthouse
Foley Square
New York, New York 10007

Re: Gertrude Bonime and Lillian Olden
v. John C. Doyle, William M. Wismer
and Canadian Javelin Limited
73 Civ. 5117 (MEL)

Sir:

We enclose herewith for docketing and referral to Judge Lasker a Notice of Motion and Supporting Affidavit. We have already discussed this motion with Judge Lasker and he advised that his requirement of a pre-motion conference is to be waived in this instance.

Accordingly, we request that you docket the motion and transmit the papers to Judge Lasker as soon as possible.

Very truly yours,

Neal M. Goldman

NMG:jb

Enclosure

cc: Robert Plotkin, Esq.

EXHIBIT B

3/2/76
4

~~Tom S~~

Ben Wolf called to say he won't give me depositions in Boston, because he doesn't want to inject himself into the Chicago litigation.

RP

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, et al.,

Defendants.

73 Civ. 5117 (MEL)

AFFIDAVIT OF SERVICE

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STUART OFFNER, being duly sworn, deposes and says:

1. Deponent is over the age of 18 years, is not a party to this action and resides at Great Neck, New York.

2. On July 29, 1976, deponent personally served the within motion and supporting affidavit upon Wolf, Popper, Ross, Wolf & Jones, Attorneys for Plaintiffs, 845 Third Avenue, New York, N.Y.; Diamond & Golomb, Attorneys for Defendant Canadian Javelin Limited, 99 Park Avenue, New York, N.Y.; and Martin Ozer, Esq., Attorney for Defendants John C. Doyle and William M. Wismer, 475 Fifth Avenue, New York, N.Y., by delivering a true copy thereof to each of the above attorneys.

STUART OFFNER

Sworn to before me this
29th day of July, 1976.

JOANNE M. BERTOLOT
NOTARY PUBLIC, State of New York
No. 43-0103
Qualified in Queens County
Commission Expires March 30, 1977

U.S. DISTRICT COURT FILED AUG 06 1976 S.D. OF N.Y.

ENDORSEMENT

GERTRUDE J. BONIME and LILLIAN OLDEN, Plaintiffs, v. JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED, Defendants. 73 Civ. 5117

Goettel
~~LACKER~~, D.J.

The Lurie objectors make application in the alternative for four forms of relief:

(1) The motion to withdraw and vacate the opinion of June 30, 1976 and to disapprove the proposed settlement raises for the first time additional allegations of procedural insufficiency in the administration of this case and takes general issue with certain portions of the June 30 opinion. The former items are, at this stage of the proceedings, untimely and the latter arguments are more properly addressed to the appellate court.

(2) The motion to reopen the hearing on the fairness of the proposed settlement is based solely on the Luries' previously expressed and rejected assertions that they have been denied an adequate opportunity to develop their objections to the settlement and their general disagreement with the court's June 30 decision. This is wholly insufficient to warrant the extraordinary relief of revoking that decision and conducting another extensive round of hearings and submissions.

(3) The motion to alter or amend the proposed orders suggests a variety of modifications and additions which we decline to accept, as the proposed Consent Order and Final Judgment filed concurrently with this Endorsement accurately reflects the proper nature and scope of the intended disposition of the case.

(4) The Luries appropriately urge that the documents referred to in Part 4 of the motion be made part of the record in this case. Since this has been accomplished by the inclusion of the documents as exhibits to the moving papers a formal order of the court would be superfluous.

For the foregoing reasons the motion is denied.

It is so ordered.

Dated: August 6, 1976

Irving L. Goettel
U.S.D.J.

A299

Part I Judge

The form of this order has been approved by Judge Lasker. WS

MICROFILM AUG 06 1976

CONSENT ORDER AND FINAL JUDGMENT (Pages A300-A306)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GERTRUDE J. BONIME and LILLIAN OLDEN,

Plaintiffs,

-against-

JOHN C. DOYLE, WILLIAM M. WISMER and CANADIAN JAVELIN LIMITED,

Defendants.

----------x

73 Civ. 5117 (MEL)

CONSENT ORDER AND FINAL JUDGMENT

The parties having submitted to the Court a Stipulation of Settlement dated July 9, 1975 ("Settlement Stipulation") providing for the settlement of this action and for the dismissal of the claims asserted or which could have been asserted therein upon the terms and conditions set forth in said Settlement Stipulation, and this Court, by Orders filed on February 10, 1975 and on July 9, 1975, having determined that this action may be maintained as a class action on behalf of all persons who purchased Canadian Javelin Limited common stock during the period commencing April 30, 1969 through October 25, 1973, inclusive, and, further by said Order filed on July 9, 1975, having directed, among other things, (i) that a hearing be held on October 17, 1975 at 9:30 a.m. in Room 618 of the U.S. Courthouse, Foley Square, New York, New York 10007 for the purpose of determining whether the Settlement set forth in the Settlement Stipulation is fair, reasonable and adequate and should be approved by the Court and whether the action should be dismissed on the merits with prejudice and without costs; (ii) that a notice of the class action determination, of the settlement hearing, of the right of

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class members to request exclusion from the class and the settlement and not be bound by the settlement, judgment or other disposition of the action, and of the requirements of filing of proofs of claim be given by Canadian Javelin Limited within sixty (60) days after the date of said Order by first class mail addressed to holders of record of the common stock of Canadian Javelin Limited as shown on the stock transfer records as of thirty (30) days prior to entry of said Order and to all other identifiable members of the class who are no longer stockholders of Canadian Javelin Limited, and by publication once in The New York Times and all national editions of The Wall Street Journal and The Toronto Globe and Mail; (iii) that any member of the class of Canadian Javelin Limited stockholders might appear at the hearing and present evidence and show cause, if any he had, why the proposed settlement should not be approved as fair, reasonable and adequate and the action dismissed on the merits, with prejudice and without costs, provided that no such person should be heard, except by special permission of the Court, unless an objection had been in writing and provided further that no objections, papers and briefs should be received and considered unless filed with the Court no later than twenty (20) days prior to the hearing date and mailed three (3) days before such filing to Messrs. Wolf Popper Ross Wolf & Jones, Diamond & Golomb, P.C. and Moses Krislov, Esq.; and (iv) that any members of the class desiring to be excluded from the class should file a request for exclusion not less than ten (10) days prior to the hearing; and

Due proof of giving of such notice in accordance with said Order having been submitted to the Court and the Court having

read the affidavits, letters and papers submitted and filed in support of and against the fairness, reasonableness and adequacy of the settlement as set forth in the Settlement Stipulation; and

All persons present at the hearing having been given an opportunity to be heard in support of the settlement or in opposition thereto, and the Court having fully considered the Settlement Stipulation, the testimony of Doctor Roger F. Murray and all affidavits, letters and papers submitted to it in support of or in opposition to said settlement,

NOW, THEREFORE, upon the record and all prior proceedings herein, and after due deliberation the Court having rendered its Memorandum dated June 30, 1976, it is

ORDERED AND ADJUDGED THAT:

1. Due and adequate notice of the class action determination, the proposed settlement, and the hearing, and full opportunity to be heard have been given.

2. The Settlement Stipulation is hereby approved and is adjudged to be fair, adequate and reasonable.

3. The defendants are adjudged to be jointly and severally liable to pay $1,350,000 into a settlement fund (the "Fund") as required by said Settlement Stipulation.

4. Canadian Javelin Limited shall deposit with Diamond & Golomb, P.C. or Steptoe & Johnson, Esqs. as escrowee(s), the following amounts on or before the dates hereinbelow indicated:

November 5, 1976	$175,000.00
February 7, 1977	$225,000.00
May 5, 1977	$150,000.00
August 5, 1977	$400,000.00
November 7, 1977	$400,000.00

The said amounts are to be deposited out of royalties (i.e., quarterly payments to become due to Canadian Javelin Limited from Wabush Mines Consortium on iron ore tonnage shipped or produced from the demised premises at Wabush, Labrador) to be received by Canadian Javelin Limited after the date of this Order and Final Judgment. Said amount or amounts so deposited shall become part of the Fund and shall be immediately placed into an interest bearing escrow account for the benefit of the members of the class entitled to share in the Fund.

5. Notwithstanding the provisions of paragraph 4 hereinabove, the cash amount of $1,350,000 or,if sums have been deposited pursuant to the provisions of said paragraph 4, the cash difference between such sums theretofore deposited into escrow (excluding interest) and the sum of $1,350,000 (which difference is hereinafter referred to as the "balance due") shall be immediately deposited by Canadian Javelin Limited with Diamond & Golomb, P.C. or Steptoe & Johnson, Esqs., as escrowee(s) if after the date of this Order and Final Judgment and any time before the time specified in paragraph 6(a) or 6(b) hereinbelow (whichever is later), Canadian Javelin Limited shall obtain sufficient financing from a lending institution, settle its claims against the Newfoundland Government in an amount sufficient to make such deposit or shall otherwise obtain sufficient additional funds which can be applied to make such deposit.

6. Notwithstanding the provisions of paragraphs 4 and 5 hereinabove, within ten(10) days after (a) the expiration of time to appeal from this Order and Final Judgment or (b) if an appeal be had, affirmance on appeal and expiration of time for further review or appeal, defendants

shall deposit with the escrow agent Diamond & Golomb, P.C. or Steptoe & Johnson, Esqs., the cash sum of $1,350,000 or, if sums have been deposited pursuant to the provisions in paragraph 4 hereinabove, the balance due. The said sum or balance due shall be placed into an interest bearing escrow account for the benefit of the members of the class entitled to share in the Fund. Upon application made within ten(10) days prior to the date said sum or balance due is to be deposited into escrow, and upon good cause shown by defendants, after notice to plaintiffs, the Court may consider whether there shall be any extension of time within which payment of said sum or balance due pursuant to this paragraph shall be made and shall retain jurisdiction to make such modification (if any) as to time of payment, and to impose such conditions thereon (including payment of interest) as the Court shall deem proper.

7. On the "Fund Distribution Date" provided in said Settlement Stipulation, the escrow agent shall deliver the amount of the Fund including any interest which accrued thereon, to Wolf Popper Ross Wolf & Jones for distribution by Wolf Popper Ross Wolf & Jones in the manner provided in the Settlement Stipulation after deduction of the amount which may be awarded to them by the Court for counsel fees and disbursements. All expenses of administration, including expenses of distribution incurred by Wolf Popper Ross Wolf & Jones shall be paid to Wolf Popper Ross Wolf & Jones by defendants on the "Fund Distribution Date".

8. This action shall be dismissed on the merits, with prejudice and without costs as to the defendants.

9. The Settlement Stipulation shall be consummated in accordance with its terms and provisions, and this Court may make such Orders as may be necessary or appropriate in

connection therewith including, but not limited to, orders concerning the method of determining objections to proofs of claim, the method of distributing the Fund, and the adjudication of the validity of claims of class members which have been objected to by the parties and as to which hearings were requested.

10. All persons who are members of the class and who have not opted out in accordance with the procedures set forth in the notice of a class action determination referred to above or who have not otherwise been permitted by the Court to opt out (including persons who have filed claims which were rejected by the parties and who did not timely request a hearing thereon, and those who filed claims and requested such hearing) are permanently barred and enjoined from instituting or prosecuting either directly or representatively any action asserting claims which have been or might be asserted arising from or relating to the matters alleged in the Amended Complaint.

11. This Court shall retain jurisdiction over all matters relating to the administration and effectuation of the settlement as provided in the Settlement Stipulation, including the proper distribution of the Fund, and the allowance to plaintiffs' attorneys of reasonable counsel fees and disbursements incurred in connection with this action.

12. This Order and Judgment shall constitute a final decision of this Court for the purpose of 28 U.S.C. § 1291.

Robert L. Carter
U.S.D.J.

Dated: New York, New York
July 30, 1976

JUDGMENT ENTERED - 8/9/76
Raymond F. Burghardt
CLERK

The undersigned hereby consent as to the form of the foregoing Order and Final Judgment.

Dated: New York, New York
July 29, 1976

WOLF POPPER ROSS WOLF & JONES

By: Robert M. Kornreich

Attorneys for Plaintiffs
845 Third Avenue
New York, New York 10022

DIAMOND & GOLOMB, P.C.

By: _____

Attorneys with Steptoe & Johnson, Esqs.
for Defendant Canadian Javelin
Limited
99 Park Avenue
New York, New York 10016

MOSES KRISLOV

By: _____

Attorney of Record for Defendants
John C. Doyle and William M. Wismer
800 Engineers Building
Cleveland, Ohio 44114

TRANSCRIPT OF PROCEEDINGS BEFORE JUDGE LASKER
ON 7/23/76 (Pages A307-A358)

GTjw

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

GERTRUDE BONIME and LILLIAN OLDEN,

Plaintiffs,

-vs- : 73 Civ. 5117

JOHN C. DOYLE, WILLIAM M. WISMER, CANADIAN JAVELIN, LTD.,

:

Defendants.

----------x

July 23, 1976
11:20 A.M.

B E F O R E :

HON. MORRIS E. LASKER,

District Judge.

A P P E A R A N C E S :

WOLF POPPER ROSS WOLF & JONES, ESQS.,
Attorneys for Plaintiffs
845 Third Avenue
New York, New York
ROBERT M. KORNREICH, ESQ., of Counsel

VOL #10

A P P E A R A N C E S (Continued):

MOSES KRISLOV, ESQ.,
Attorney for Defendant John C. Doyle

STEPTOE & JOHNSON, ESQS.,
Attorneys for Defendant Canadian Javelin, Ltd.
1250 Connecticut Avenue
Washington, D.C.
GEORGE B. MICKUM, ESQ.
SCOTT R. SCHOENFELD, ESQ., of Counsel

-and-

DIAMOND & GOLOMB, P.C.,
99 Park Avenue
New York, New York
IRVING L. GOLOMB, ESQ., of Counsel

ROBERT PLOTKIN, ESQ.,
Attorney for Objectors Fay and Haskell Lurie
and Sally Einstein
55 East Monroe Street Suite 4005
Chicago, Illinois

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THE COURT: There has been discussion before the reporter arrived in which Mr. Mickum indicated that the company would not be able to meet an immediate order to make a payment of the settlement fund, that he was not sure whether or not the individual defendants would be able to do so; and Mr. Plotkin asked for an opportunity, before the meeting ends, to make comments as to what he believes ought to be included in an order and why he would like time to submit a proposed order himself.

I call upon Mr. Kornreich, as attorney for the

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plaintiffs, to indicate what he, as counsel for the plaintiffs, would do if an order were entered ordering the defendants to make a payment before the appeal process had been exhausted in the event that the defendants did not put up the money.

MR. KORNREICH: Ultimately, if the defendants defaulted after appeal and if there was an affirmance, we would then have to pursue the judgment here or in Canada.

However, I believe there is an alternative, perhaps, which has not been considered. We have given it some further thought in light of the counterorder.

We would see no reason why in view of the fact that it is now apparent that the company has significant financial problems that the company post some sort of bond to secure the class, or some other type of collateral, or assign the royalties which Mr. Mickum has referred to.

THE COURT: The possibility of bond has occurred to all of us, I suppose. I would like to hear about that.

Ordinarily, I find when you have problems financially, you have difficulty getting bonds as well as posting the collateral. I do not know if that is the answer here or not, but I think we should explore if there

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are any alternatives.

Mr. Golomb, are you in a position to comment on that question?

MR. GOLOMB: I have some thoughts.

First of all, I have had the experience in the past in litigation in New York where I have had to look at whether or not the company could raise a bond, and I can tell you when its position financially was far more secure than it has become in the last months, since March 6th --

THE COURT: You are talking about Canadian Javelin?

MR. GOLOMB: That's right, sir.

The raising of a bond has only been on the basis, as I have been informed by bonding companies, by posting cash collaterals.

Under those circumstances, we have just refrained from doing it. This has happened more than once in my experience. So I am confident today that situation is simply not feasible.

On terms of the overall, maybe something can be said about what has happened and why we face this today.

THE COURT: Yes, I think it would be desirable.

MR. GOLOMB: I think if we brush aside the history, we do not do ourselves a service, and I want to be

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very candid with your Honor.

When the October hearing took place before your Honor on the question of the proposed settlement, there was no real question that any one of us, as far as I knew, had in his mind but that in due course the company was going to be able to work out its problem and make this settlement.

As a matter of fact, I am confident that not a single attorney that I know here would have proposed a settlement to this Court without the reasonable confidence and assurance that for the company to commit itself, or even the individuals to commit themselves, to the settlement, was something that they knew they could carry out in due course, and the reasons had to do with a series of things.

First of all, the company has royalties that come in from the Wabash Mines which, on a fast estimate, approximate something like $4 million a year, although they are subject now to certain arrears and taxes.

There is a new tax law in Labrador which cuts into that buy some hundreds of thousands of dollars and there payments have to be paid out, but it is a matter of thousands of dollars. If we had nothing other than that, we would say certainly within the time frame of six months or a year X dollars would be coming off the royalties and if you held other creditors back you could get through.

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In addition to that, the company settled with the Panamanian government a claim arising out of the expropriation, and in that settlement the company received some $5 million in cash and $18.5 million, approximately, in bonds of the Panamanian government representing principal and interest payable over some twenty years. The return per year in principal and interest on those bonds, as I last remember it, is I think $1.8 million.

So you got on the face of it something between $5.5 to $6 million of anticipated income if the company didn't do another thing. And I say this so your Honor knows the good faith with which we were dealing and how we were thinking at this time.

When the $5 million came in -- and Mr. Kornreich has correctly said to me, although angrily, "Why wasn't the money held for the settlement?"

I said, "Would you say the company ought to go into bankruptcy vis-a-vis other creditors while we waited to see what the Court would do?"

It couldn't. When the money came in it was used to defray company obligations of one or another sort.

I was on the phone this morning -- I was waiting for Mr. Mickum -- and Mr. Schoenfeld called me from the airport and I didn't know what information they had and we

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were trying to do it through channels. I was hoping the company would get some financial data.

I spoke to Mr. DeSantis, the secretary-treasurer, just before coming here this morning because I haven't heard from him, and what I gathered from him was something like this kind of a program:

That the company now expects between July and September receipts of about 700-some thousand dollars, but there are obligations of about $1 million, so it is in the red for the next three months.

October to December, that changes. They expect about two and a quarter million as against expenses of about $1 million, leaving a plus of about a million and a quarter.

January to March of 1977 they expect $3 million as against expenses of about $1.8 million leaving another plus of about $1.2 million.

Why did this come about, your Honor? There was a change of management in this company and Doyle and his group were, in the changeover, turned out of office in March, March 6th. There has been a lot of litigation. I don't know much about the details of it because it is not in my jurisdiction and I am not privy to the details. But I know in a general sense that there is litigation,

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there is an appeal on in Montreal.

There is a meeting now scheduled, a stockhold- meeting scheduled for I think the end of this month, the 30th, and the appeal is scheduled to be heard in September. I don't know whether they will or won't succeed in staying that meeting.

MR. KRISLOV: The stay was turned down yesterday.

MR. GOLOMB: You know more about it than I do.

MR. KRISLOV: I got a call this morning.

THE COURT: How did that effect the income of the company?

MR. GOLOMB: In this sense:

With the change of management, I am told by Mr. DeSantis, the company has not been able to free the bonds up. The bonds have been kept at the Banque Nationale de Paris, which is the company's banker, as collateral for the repayment of monies due the bank.

I am told by Mr. DeSantis that that is expected to have been repaid to the bank by April, approximately, of 1977, at which point there will be no further claim by that bank on these bonds.

THE COURT: Are the bonds liquidatable?

MR. KRISLOV: Yes.

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MR. MICKUM: They can be sold at a significant discount.

MR. GOLOMB: They are government bonds. They are I think eight percent bonds.

THE COURT: I did not know if this were publicly tradable bonds or not.

MR. MICKUM: They are negotiable.

MR. KRISLOV: I think the key note of the whole thing that the question of management has been in the Courts in Montreal and the bonds would support a much greater loan than what is outstanding on them, something like $1 million at the present time.

THE COURT: In other words --

MR. KRISLOV: But with the controversy as to management --

THE COURT: It is not an operational question, it is a management and legal question.

MR. KRISLOV: Yes. As soon as that management issue is determined either on July 30th or at some later date, which will certainly be by the end of September, then whoever is management, then the banks will know they can deal with them without having problems.

THE COURT: What effect would it have if there was a judgment outstanding against the company?

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You can always work things out with Mr. Kornreich if he is persuaded that you are dealing with him on the level and he is going to get his money.

MR. MICKUM: I think that the existance of this judgment has been telegraphed for sometime.

THE COURT: I would have thought so. I wonder if we are really talking about a serious problem or whether your affairs have not already discounted the liability.

MR. MICKUM: If I understand your question, your Honor, I don't think that the entry of the judgment as such would inhibit the company's --

THE COURT: It is not going to electrify Wall Street.

MR. MICKUM: No, not one bit.

Do you agree with that?

MR. GOLOMB: Certainly.

MR. KRISLOV: I think there are a number of serious problems --

MR. GOLOMB: Along the entry of a judgment?

MR. KRISLOV: Yes.

Number one is this, your Honor:

We are very seriously concerned with the deposit of one million, three hundred --

THE COURT: Who is "we"?

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MR. KRISLOV: Mr. Doyle and I think the company also.

THE COURT: I cannot see why I should worry about Mr. Doyle at this moment if, number one, the company has already agreed it is going to pay vis-a-vis him and, number two, he isn't running the company at the moment, although maybe he will get back in.

MR. KRISLOV: He is a director.

THE COURT: I know.

MR. GOLOMB: Your Honor, I have indicated my concession --

THE COURT: I do not mean to be callous.

MR. KRISLOV: I merely wanted to make the point, your Honor, and I think it is an important one, that in the posture this case has assumed, we have now a case in Chicago and we have a case in this District in addition on the opt-outs, and Mr. Doyle recently had that situation where a bail deposit he had made in New Foundland and the Canada Supreme Court reversed New Foundland and threw the charges out by a nine to nothing vote, when Mr. Doyle went to get his money it had been attached.

Both from the point of view of whether or not Mr. Doyle may be called upon if the company does not deposit the money and from the company point of view,

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FOLEY SQUARE, NEW YORK, N.Y. -- 791-1020

regardless of management, he remains a substantial shareholder.

I think with Mr. Plotkin's indication here that there will be an appeal, there is a very serious question as to later whether or not, if this judgment is not affirmed--again, I don't say that because I don't really expect it to be affirmed but those things happen -- as to whether or not the money will just flow very neatly back into the coffers of either the company or the defendant.

THE COURT: I do not really think that is a significant worry.

Both orders provide for an escrow arrangement, don't they?

I do not know whether we want to keep it here in the Court or not, because I do not know whether interest can be paid if it is kept here.

MR. GOLOMB: It is not paid.

THE COURT: It is a lot of money and interest should be paid. Some arrangement certainly can be worked out by which you can be assured that if the Court of Appeals reverses the situation that the money would go back to the company or wherever it came from.

Let me say this:

While certainly I do not suppose Mr. Plotkin

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would be here if he thought everything was all smoothed away, nevertheless, I have not just assumed it because you are here you are necessarily or inevitably going to appeal or disagree with everything that happens here.

I am, however, assuming it is a significant possibility or I would not be wasting my time talking about the differences between a pre-appeal payment and a post-appeal payment --

MR. MICKUM: That is right. It would be moot.

THE COURT: Yes.

I understand that Mr. Doyle would prefer it. Of course, the company would prefer it, too.

The considerations in my mind are this:

What is the pragmatic difference between entering an order that the payment should be made now, even in the knowledge that it cannot be paid now, and making it at a later time?

MR. GOLOMB: As a pragmatic answer immediately, your Honor, this company would be in default.

THE COURT: Would that trigger other default?

MR. GOLOMB: Yes. It can trigger a bankruptcy as quickly as this.

THE COURT: These are the things which you are concerned with --

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MR. MICKUM: Precisely.

MR. KORNREICH: Then we would have --

MR. GOLOMB: If there is a bankruptcy, you would have a preferential transfer.

MR. KRISLOV: During this control fight, there has been a great deal of talk bandied about people putting this company into receivership and people putting this company into bankruptcy, whatever the fancy term, because we are dealing with Canadians and I really don't understand their liquidation laws. I don't understand their other laws, but that I don't understand, too.

But at any rate, that would pose an immediate problem if somebody in this whole picture sought to put it into receivership. I am not talking necessarily about anybody who is on either of the two sides at this time, but there have been internecine fights on the two sides.

Apart from that, we have found significantly that when you have an outstanding judgment of that nature and it has been sitting there for a year or so and you go to seek the financing to pay this, you know, to get a five or eight or ten million dollar loan that will clear everything up, including New York, if you have been in default on New York for about a year, the bank may just say, "We don't need a headache company who can't pay a judgment for

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FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

a year," and your whole financing can get loused up over that sort of thing.

From the other side of the coin, I don't really see where there is any realistic advantage in getting money paid in ahead of time and having it lay here or to have an outstanding judgment.

THE COURT: I will agree with that, Mr. Krislov, if there is some practical way to secure the situation in the meantime.

There are two methods of approach to that.

One is the classic one that Mr. Kornreich suggested. While I can see that you would have a problem getting a bond, I think there should be explored whether there are other forms of collateral that might be pledged.

And the second way, of course, is to perhaps enter an order -- I am not sure I would make it necessarily post-appeal, but it was timed in relation to the affairs of the company and its ability to pay, with the right of the plaintiffs to be kept fully informed of such business facts as they needed to know in order to do this and on their part to reapply to the Court for an amendment of the judgment if anything went sour in the meantime.

In other words, you are asking Mr. Kornreich at the moment to rely on the judgment of all you gentlemen

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that everything is okay and it is going to be paid. If I were he, I would not want to do that.

MR. GOLOMB: Can I have a moment with Mr. Mickum and Mr. Schoenfeld privately? I have a suggestion that I don't want to give out unless I have a consensus on it.

MR. MICKUM: While I apprehended the wisdom of Mr. Kornreich's position of assigning royalties, I think that would be every bit as much of a bankruptcy as a default on the judgment -- certainly that would be the preference -- and under Canadian law, according to the advice I have received, I don't know that anybody else is going to disagree with that.

I mean, we have, to be more specific, as I understand it, there is a royalty payment now estimated to approximate $1,300,000, enough for the judgment, coming in in October. But if that were assigned now in face of the other creditors, who include, I might add, the Province of the Government of New Foundland, I would be fearful of doing that.

I couldn't recommend it in good conscience.

THE COURT: I understand.

MR. MICKUM: I think there may be a way around. You mentioned an order that would be totally

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

effective at the end of an appeal time. There may be a way to which the company could report to the Court as it goes along and make deposits more or less in line with its obligation to other creditors which would obviate the problem, certainly get around the problem of good faith, because there would be an order applicable to the company which required it to make a showing of what it was doing to meet this obligation while the assumed appeal was being pursued.

There certainly is no thought in my mind that the best interests of any creditor or any shareholder of the company will be served by bankruptcy.

THE COURT: I assume a large number of the member of the class are shareholders, so it would be pyrrhic for them to push too hard.

MR. MICKUM: And I will be perfectly candid, your Honor, and I hope I am not talking out of school, but based on some very close experiences that all of us have had, there is an internecine warfare going on between Canada and the U.S., your Honor, and I suspect any untoward action on our part down here would prompt the Canadian Court to take action so rapidly that both of us will be out of Court.

I wish to avoid doing something so precipitative

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

if there is an alternative to avoid a confrontation.

MR. GOLOMB: The secretary-treasurer gave me a figure of the amount of money in the bank. He said $4,000 in one bank and a few thousand in another. That is what we are talking about.

MR. MICKUM: And in defense of the company, your Honor -- I do wish this on the record -- the company had financing out of which it was anticipated that this judgment, when your Honor approved it, would be satisfied.

The change of management in March led the bank, through which this financing was obtained, in effect, to call the loan.

They said, "We are not going to extend any more credit. What you have already taken down is due and we are going to hold the bonds until you pay back what is due."

So I share Mr. Golomb's fear, if you think nobody was thinking about this, people were thinking about this and it was really all handled.

But since the change of management, it has not proved feasible to obtain alternative sources of funds out of which the judgment could be satisfied immediately.

MR. GOLOMB: The company has, as I understand, tried and failed.

MR. MICKUM: Failed, many times.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

THE COURT: Mr. Golomb, you suggested a few minutes back discussing the matter.

MR. GOLOMB: A very brief recess.

THE COURT: Mr. Plotkin, do you want to make your statement now before the recess?

MR. PLOTKIN: I just wanted to comment on the thing that has been the subject of discussion.

Your Honor, this morning is the first time that I have heard these facts concerning the company's financial problems.

THE COURT: In case it is of any importance, let me indicate it is the first time I have heard the nature of them. There was one allusion to them in a letter from Mr. Golomb which precipitated this conference, but it was very general.

MR. PLOTKIN: I know, I am very conscious of the fact that I am probably perceived by most people here as being engaged on a wrecking operation.

I am not a wrecker. I can only tell you that. And if you believe it, fine. If you don't, your Honor, I am just in bad shape.

I say that with some emphasis with respect to these comments that I am going to make, because it is easy to slough off what I am going to say on the basis of that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

perception, "Plotkin is trying to wreck this settlement on any basis."

I can only assure you that I am not.

Your Honor, these facts that have been disclosed this morning raise what seems to me to be a very serious problem with respect to the settlement, independent of anything which had been present before, because the comments made by company's counsel, and I believe the same is true of the comments made by Mr. Krislov, can only be interpreted, I think reasonably, in one way, and that is that there is no assurance that this money, this $1,350,000, will ever be paid.

How a settlement can be approved on the basis of a consideration which may never materialize is beyond me.

To talk about a bond -- and this is ancillary, it is secondary, that is the main point I wanted to bring up. The other comments are of a subordinate nature.

My experience with bonding companies, when you are dealing with big bonds, is this, and perhaps your experience is similar:

If the bonding company is called upon to pay, it is only because the principals are unable or unwilling to pay, and in that situation it is my experience with big bonds the bonding company will always resist, and so you

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

have got a lawsuit with the bonding company because their own money is in danger.

THE COURT: I think this aspect of your discussion may be correct, but I do not think it is the route that is going to be followed anyway so I do not think we need to worry about it.

A bond might be a logical thing in some circumstances, but not these circumstances.

MR. PLOTKIN: May I make one more comment very quickly.

Mr. Kornreich has alluded to the value of having a judgment.

A judgment is a choice of action, it is not the money, and I don't think that the class ought to have, instead of $1,350,000, a cause of action which is going to be enforced -- how and where? In Canada? Is that what the class is getting? A judgment to be enforced in the Canadian Courts and subject to laws which none of us at this table probably are all that familiar with?

THE COURT: I am not sure what you want me to do as a result of all that.

MR. PLOTKIN: The result is that without waiving any of my position -- you know my basic position is that $1,350,000 is inadequat

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

But independent of that, wihtout diminishing that position in any respect, it would seem to be an absolute prerequisite that the money be paid now.

I am not trying to punish anybody, but the only way you know the money is going to be paid is if it is paid now.

Thank you. Thank you for the opportunity, Judge.

THE COURT: Gentlemen, let's take an intermission while I hear this other matter for ten minutes or so.

(Recess)

THE COURT: Is there a statement to be made by someone?

MR. MICKUM: Mr. Golomb and I have caucused and to a degree we have caucused with Mr. Krislov, also, and I believe that the way to handle this is via the royalties.

In other words, there should be the entry of a judgment calling for a quarterly report to the Court of the income from the royalties and a designation by the company of the amount it will pull out of that particular royalty -- we know slightly in advance how much the royalty is going to be -- into the fund with the expectation by the end of 1977, if not discharged earlier, the entire amount would be paid in.

This is, again, based on the assumption of an

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

appeal that I would rot believe would be wholly resolved within a year. I may be wrong.

THE COURT: You mean you do not think the appeal would be wholly resolved in a year?

I think it would.

Of course, the sooner we get the judgment entered, the sooner that will be out of the way.

MR. MICKUM: But I did not want to overstrap -- in other words, I did not want to make an undertaking that could not be reasonably lived up to. But I do think that within a year, the entire amount -- I would anticipate it would be done much more rapidly than that, but to allow --

THE COURT: Let me see if I understand you correctly.

What you are saying, in effect, is the company will undertake to pay any judgment here as fast as it can legally do so.

MR. MICKUM: Precisely.

THE COURT: By legally, I mean bearing in mind that somebody else has some collateral that you would like to get your hands on, that you have some other creditors, that you cannot tip the boat too far or else you will create more problems than we have already.

MR. MICKUM: Exactly.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

THE COURT: And the Court and plaintiffs' counsel, presumably, would be kept informed of what is going on.

MR. MICKUM: Precisely.

And we would expect as the royalties come in, in fact, provided -- I would recommend that the judgment provide that an amount to be agreed on between the company and the Court would be placed in.

THE COURT: You mean a dollar amount or the percentage of the royalties?

MR. MICKUM: Yes.

In all candor, I don't wish to pursue it on an assignment basis for fear of what the connotations of that would be.

MR. GOLOMB: That could be an act of bankruptcy.

MR. MICKUM: On the other hand --

THE COURT: If I at that time act rather than you and I order you to do something.

MR. MICKUM: That's right.

If we came into you in October and said, "Judge Lasker, the royalty payment that will be received by the company will be a net $1,300,000. Here are our other obligations. Out of this we believe in good faith we could make a payment of a quarter of a million dollars or a half a

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

million dollars and we will put that in a fund."

I want to discuss the fund a little bit, but this is the mechanics that I would visualize as a fair way that would keep the Court and the plaintiffs fully apprised of what the company was doing and be a fair visible good faith effort to discharge its obligation.

THE COURT: Mr. Plotkin, I suppose it is appropriate to ask, although I do not think any of us are in doubt, whether your present thinking is that you are going to appeal the judgment.

MR. PLOTKIN: Yes, sir, your Honor.

THE COURT: Then I suppose the order would be -- regardless of what Mr. Plotkin would say I would still do it, but certainly in light of what he said, structure an order that pending appeal, the company would, out of its royalties, put aside so much money to be there to be paid in the event of affirmance.

It might not turn out exactly even, but we could deal with one problem at a time as we go along.

MR. KORNREICH: It should be clear that this is not the exclusive method for satisfying this judgment, that this is not, in effect --

THE COURT: No, to secure the judgment.

MR. KORNREICH: This is for an additional

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

judgment and I think the company has an oblgiation to pay if the line of credit becomes available.

MR. MICKUM: I want to make clear and so the Judge also understands, in April the amount presently owing on the bonds -- the amount owed which the bonds now stand for security will be discharged. At that point the income free and clear out of those bonds, $1,800,000 annually, those bonds also then become usable as security for other financing or even salable.

Right now we have an $18.6 million bag that nobody can grab.

THE COURT: How are you going to pay the French obligation? How much is it?

MR. MICKUM: The present amount of that obligation, your Honor, stands at around $1 million.

THE COURT: And you have $18 million pledged?

MR. MICKUM: I didn't make the deal.

MR. GOLOMB: The $18 million aren't pledged. Those are bonds which are payable in twenty years.

THE COURT: Whatever they are worth, they are worth a lot more than $1 million, aren't they?

MR. KRISLOV: Judge, those bonds were pledged for a $5 million line of credit at the Bank Nationale in Panama, out of which about two-plus million had been taken

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

down, and the bank was advised that $3.5 million was the top draw on it because $1,350,000 had to go to Judge Lasker.

MR. MICKUM: Right.

THE COURT: I just get it off the top.

MR. KRISLOV: And what happened was when the management fight began, the bank said, "We are not going to have any hassle," so they called the loan, called the money which was in our account, which was well nigh to a million dollars, reduced it and said, "We are going to apply the quarterly payments," which amount to approximately $450,000 a quarter, "to what we have coming."

Management then went out and including the old people, went out, to try and get something and nobody wants to make any loans to anybody during the period where they are not sure their mortgage is going to be good.

By April there is no question you will be able to raise $5 million on this like falling over a log.

MR. MICKUM: The long and the short of it is that there is that additional means by which the judgment could be discharged earlier than the end of 1977. But I am looking at, we know royalties are coming in, we know that there are minimums applicable to those royalties even if they don't mine a ton of ironore in Labrador.

THE COURT: We could structure the order, then,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

something like this, as I see it:

That the judgment is entered against the company for X dollars to be paid by the end of the appeal process or blank, whichever is later, I suppose, but blank would be April 1977 or something like that.

MR. MICKUM: Or December 1977.

THE COURT: December 1977?

MR. KORNREICH: I think we are extending it.

THE COURT: No. I had in mind trying to find a time which, A, would compare reasonably with the approximate amount of time to dispose of the appeal, and B, with the realities of the economic situation.

Maybe April is too early, but when you mention getting your $5 million --

MR. MICKUM: That may cut it a little thin. Maybe June 30th.

THE COURT: I am not trying to specify the date, I am trying to give you an idea.

MR. GOLOMB: June is a good date because royalties come in.

MR. KRISLOV: No, July 25th.

THE COURT: If the appeal is not decided by then, naturally the time runs. Even if the appeal was decided a month or so before, you might go that long, but not

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

longer, obviously. Mr. Kornreich would not and I would not blame him.

In the meantime, the obligation, the contingent obligation that is contingent only on a firm answer or expiration of the time to appeal, would be secured by these payments as you went along.

MR. MICKUM: Right.

MR. KORNREICH: Could we have some definite indication as to how much is going to be put up out of each royalty?

MR. MICKUM: I had indicated that my idea was to submit the facts to the Judge and he would make the determination.

THE COURT: I am a little concerned about that for two reasons:

First of all, as I mentioned to you earlier, I hope to and intend to, indeed, leave on vacation the week after next and I would like to sign an order in this matter for the benefit of all of you so you get the appeal time running and so forth as soon as possbile. I know Mr. Plotkin wants to make a statement about that and I will give him a chance to.

Second, I think I have pretty well indicated to you what my approach to this matter is, and that is that

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

the plaintiffs are entitled to get as much as the realities of the situation will allow and as soon as it will allow.

I am quite prepared to make a ruling on any items that are in dispute, but there can be a lot of detail in something of this kind and I think Mr. Kornreich and Mr. Golomb, at least, aided by you since you are in town, Mr. Mickum, ought to sit down and sketch out the details of this thing. It can take a little while.

If there are any questions that you think you would like to have decided in advance, since you are here, I will be glad to give you my attitude toward them. But otherwise I would like to see if the plaintiffs and the defendants, at least, can't come up with an order on which they substantially agree.

And, Mr. Kornreich, in a sense, there is nothing else you can do.

Mr.Plotkin, I assume, will not subscribe to the order, but that is up to him and will not affect my willingness to entertain the order.

MR. KORNREICH: Did Mr. Mickum indicate just earlier this morning that the royalties were spoken for through early next year?

THE COURT: No, I did not understand that. I understood him to say for the next three months or so their

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

liabilities will be -- you said a million against 700,000, I think.

MR. GOLOMB: Yes.

THE COURT: And after that there is a pretty good pick up.

MR. MICKUM: That's correct.

MR.KRISLOV: In the old days I was pretty much in charge of dickering with the royalties so I am more familiar than most people.

THE COURT: What are the royalties for? Mineral royalties?

MR.KRISLOV: Yes, iron ore. They have a $300 million mine.

THE COURT: Does it depend on production?

MR. MICKUM: Oh, yes.

MR. KRISLOV: It depends upon both minimums and production, and that is where the problem arises that George has beentrying to get across.

You see, in January, basically, you are operating on minimums as opposed to production because it is up in New Foundland --

MR. MICKUM: And they can't ship. It is frozen up.

MR. KRISLOV: And we don't get paid at the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

mine mouth, we get paid down at Seven Islands when it gets down there and taken out of the stock pile there.

We took a good look at that and despite the delay in payment, it is so favorable to the company to get paid in the spring when they take it out of the stock pile and ship it because that is when they increase the iron ore prices every year and our price is tied to that, that we abandoned negotiating with them on that.

There is also this new New Foundland mining tax which we are litigating in the Courts, but unlike here, in Canada, if there is a tax, you got to pay it and you get it back later if it is unconstitutional.

THE COURT: It is bad enough here. I have a case before me in which a fellow bought a piece of property and he achieved transferee liability. As a result, the property was sold and the government is going after him not only for the value that he paid for the property, but also for the entire liability of the transferer and going after his other property.

I am asked to enjoin the government, and have conlcuded that unless he can prove to me he is going to literally be ruined, the Court hasn't got any authority under the injunction statute.

MR. KRISLOV: At any rate, the way the thing

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

actually works out is that a great big fat payment comes on October 25th.

THE COURT: October 25th?

MR. KRISLOV: Yes.

MR. MICKUM: I thought I made that clear.

MR. GOLOMB: But there is a substantial one in July and the biggest is October.

MR. KRISLOV: Right.

MR. MICKUM: This pre-July one is pretty well eaten up.

MR. KRISLOV: There is also this loan -- there are three loans from a pension fund and, basically, they will --

THE COURT: You are in as good a shape as New York City, apparently.

THE COURT: Canadian Javelin.

MR. MICKUM: Only slightly better.

MR. KRISLOV: A little bit better. Of course, we don't have the sentimental feeling toward Canadian Javelin as some people have toward New York City.

MR. GOLOMB: It is a very small apple.

MR. KRISLOV: At any rate, two of those three loans will be paid off by that October 1977 payment, and I would suggest that that outer date that you say, you

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

know, the date that the judgment becomes final should be October 25, 1977.

THE COURT: I will bear that in mind. But I think in the first instance you should sit down with Mr. Kornreich and lay this all out for him and let him know and let him -- if he agrees with you, fine. If he does not agree with you, he can say why he does not and I will see who I think is right.

It does not do any good, Mr. Kornreich, for me to tell them to pay you $2 million in April of 1977 if they are only going to have $100 in the bank. But you are entitled, it seems to me, to get whatever information you need to make a sensible decision on the matter.

MR. KORNREICH: We will be reasonable about it. But I think we have to have some assurance that this money is substantial and it is being put away so if we fix a deadline for payment we know that that is the deadline and the money is going to be there.

THE COURT: I am on your side. I am only saying it seems to me that your side involves the realities of the situation, naturally, particularly since you do happen to represent a class of people who have a continuing interest in the welfare of the company.

MR. MICKUM: I would like to address that point,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

if I may, your Honor.

I think speaking only for myself, I think the company would be agreeable to a deposit of whatever the amount is that is agreed on on a current basis, say, with the Montreal Trust Company or any reputable bank in Canada.

I fear, quite honestly, bringing it into the United States.

We have an attachment before judgement statutes which could really complicate the thing. There is just no sense in tying this fund up in potential litigation in the States.

We have, in addition to this case in New York City, there is another case coming along here.

THE COURT: Let me ask you this --

MR. MICKUM: But there is no reason why this trust couldn't be in Canada.

THE COURT: When can the first payment, installment payment be made?

MR. MICKUM: I would expect that the first deposit could reasonably be made, depending on the size of it, on October 25th, or the day after, of this year.

THE COURT: That gives us a little time to work out the details of the escrow fund.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

If I am going to sign an order next week, we can say simply placed in an escrow fund subject to terms and conditions of the Court so you do not have to decide all these details at the moment.

I do not know when you talk of an escrow fund whether you contemplate Mr. Kornreich being one of the escrowees and one of you being one of the escrowees or whether you are going to have an independent escrow agent or what and I do not want to get into that bag at the moment.

MR. MICKUM: I simply wanted to forewarn your Honor that it would be my very strong position that it not be in the States.

THE COURT: I can understand that.

MR. GOLOMB: As far as I am concerned, I can see no reason at all why a representative of the law firm may be in there just to protect it.

MR. MICKUM: No problem.

THE COURT: If you want to satisfy yourself, Mr. Kornreich, as an American citizen you can exercise the same authority of the fund up there as here.

MR. GOLOMB: I think if we got the Montreal Trust Company you would be paying them a fee for holding money for doing nothing.

MR. MICHKUM: I am fearful of that money sitting

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

here in the United States.

MR. KORNREICH: We would agree to put it in an interest-bearing account.

MR. KRISLOV: I might say, Judge, I am more concerning not with somebody grabbing the money and keeping it, but the amount of attorneys fees that might have to get paid, although I may be a beneficiary of that.

THE COURT: I think your objective is to achieve the highest income on the fund with the lowest overhead, and how you do that is up to you. But I should think you would both have the same interest, particularly since possibly it is going to come back to the company.

MR. GOLOMB: Interest rates are higher in Canada anyway.

THE COURT: All right.

It seems to me we have sketched in fairly specific outlines and you have to fill in the blanks, and the more you do is up to you, but I would hope before you get on a plane you can spend a little more time with Mr. Kornreich and nail things down this afternoon and then you can submit something to me for signature next week and I would hope it would be on consent of the plaintiffs and defendants.

MR. MICKUM: Surely, your Honor.

May I ask when you are leaving for vacation?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

THE COURT: I will be here all through next week.

MR. PLOTKIN: May I just be heard with respect to this matter?

THE COURT: Please.

MR. PLOTKIN: Your Honor, I don't intend to be disrespectful, but I think it is an accurate shorthand characterization of what is taking place here today that none of us would agree to sell or buy a business for $15,000 on the basis of the information, the nature of the information that has been presented today, that is --

THE COURT: That is correct. I expect competent information to underlie all this.

MR. PLOTKIN: That before one can begin to determine what the contours of an agreement might reliably be, there have to be concrete written representations made by the parties who are asking the Court to indulge in this unusual situation, because -- and, again, I am not reflecting on Mr. Mickum or on Mr. Golomb or Mr. Krislov, but everything that has been said today, which, by the way, is not consistent, that is, there is no unanimity, there is no agreement between Mr. Krislov on the one hand and Mr. Mickum on the other as to what the prospects of this company are.

I mean, if one reads carefully what they say, it

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

is clear, and also from various comments made during the recess.

But there have to be in this record the strictest kind of representations both as to the financial facts and as to the legal consequences.

For example, if you put this money -- you know, I am not an instant genius, but nobody at this table is.

If you put this money in a Montreal bank or if you put it in a Montreal account, are you not increasing the likelihood of litigation brought by somebody, dissident factions and so forth.

THE COURT: The question of the account will be deferred and those questions can be adequately and must be adequately explored before a final decision is made.

MR. PLOTKIN: I don't think --

THE COURT: Insofar as the business facts are concerned, I agree with you that when an order is presented, it should be supported -- and I did not say this and I think it is a useful contribution on your part -- by affidavits from persons with personal knowledge of the business affairs of the company explaining why it is necessary to defer the deposit payments, let me put it that way, and what the basis of the timing which you are asking for approval is.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

MR. PLOTKIN: Do you believe, your Honor, if there is doubt as to whether or not the amount would be paid that there ought to be a judgment entered?

THE COURT: The judgment is going to be entered anyway.

MR. PLOTKIN: The judgment would not be entered unless the $1,350,000 were paid normally.

MR. GOLOMB: No, sir.

THE COURT: Let me say this:

I am trying to get as much done as possible instead of spending from now until hell freezes over exploring.

I think we are better off entering an order where I am satisfied to receive it to get the appeal process started. There is nothing to prevent anybody at any time from coming back to amend the order if for some reason the order ought to be amended.

I want to take some action. One of the problems that has already been created by the delay, which I do not think is attributable in particular to anybody, by the complexity of the case itself, is that presumably if I had been in a position to come to a decision in this matter four or five months ago, the fund might already be in existence.

Therefore, I am going to go ahead based on what

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

I agree with you must be reasonable and authoritative support for any deferrals of making deposits. But it is not abnormal simply to say this money is going to be put aside pending the appeal process and that is what we are going to do.

We are going to say the judgment is entered now. You have to pay it no later than so and so. Before that time arrives, you are ordered to put into the bank on various dates X amounts to secure that payment.

I could enter an order which did not even require the putting up of the interim security, so I do not think that the class can be injured by adding to the order that it shall be paid in the interim.

MR. PLOTKIN: I will go on to the next point, I don't want to beat a dead horse. I just want the record to reflect in my view if there is some doubt that the money, in fact, would be paid -- that is the chief thing I am saying -- that the judgment ought not to be entered. But the Court has made its decision.

Your Honor, before I ask for time to submit papers, I did want to ask something else.

May it be the decision in this case that I receive copies of all correspondence that are sent to and by the Court and all papers that are filed with the Court?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

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I think that we have demonstrated a sufficient interest in this case to be entitled to that.

I don't say that recriminatorily, but it is impossible to deal with the important complex question on a serious basis without that.

THE COURT: I hope there will be very little left for us to concern ourselves with, although obviously there will be some things. I will be glad to hear from other counsel if they know of any reason why Mr. Plotkin should not receive copies, but otherwise I am prepared to grant that request.

MR. PLOTKIN: Thank you very much.

MR. MICKUM: From our part, I know of nothing that he has not received, but --

THE COURT: I don't know. Resent letters may or may not.

MR. PLOTKIN: I think it is an accident that I am here this morning. I think it was due to your calling me, Judge, and I would not have even been informed of this if I had not called your secretary this morning.

It is not your fault, but it is just the nature of things that I am on the side.

Judge, I know you are in a hurry -- I shouldn't say that. I know that you would like to conclude this

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

meeting, this hearing, and there are a whole bunch of things I was going to say, but I am going to let you determine quickly what you want me to cover and what you don't.

MR. GOLOMB: Before Mr. Plotkin proceeds, just in the interests of not being estopped, since he is so assiduously making a record today, I must deny the assertion he made about five minutes ago about the differences in prospective among different counsel. Without going into it, it is simply not the fact.

THE COURT: I was going to state as the Judge, without taking issue in the literal sense of the word, I do not agree statements made by counsel in my presence were inconsistent with each other.

MR. PLOTKIN: Your Honor, I went on vacation on June 20th. To elicit some sympathy, I would point out that it is my first vacation in about two and a half years, I think.

THE COURT: That does not elicit sympathy from the Judge, because he works almost as hard and you do and does not make as much money as I hope you are making.

MR. PLOTKIN: I returned to my office on Monday of this week, which I believe was July 19th. Mine is a small law firm. We are two lawyers, myself and an associate, and that contributes to the fact that when I returned, as you

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FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

would understand, there was a considerable accumulation of matters, some of which were quite pressing.

It was not until the 20th, July 20th, which was Tuesday of this week, that I was able to complete reading your opinion for the first time.

Also awaiting me upon my return from vacation were two different proposed orders which have been submitted in this case by the plaintiffs and defendants. That was the first time that I saw them.

THE COURT: That was the first time I saw them, too.

MR. PLOTKIN: I am just stating what the facts were.

MR. GOLOMB: Even I, who prepared one, only saw it the day before.

MR. PLOTKIN: As soon as I completed reading your opinion on Tuesday of this week, I prepared a draft of a letter to you, your Honor, pointing out these facts, stating that I needed time to determine what should be filed with you at this date with respect to the opinion and to various matters in the case.

I tried to reach our local counsel, Mr. Goldman, on Tuesday and on Wednesday morning because I wanted to make a telephone contact with your chambers to tell you that the

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FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

letter would be forthcoming and clear the letter with him. Unfortunately, I could not reach him; he was tied up in a trial. So I undertook to call your secretary myself on Wednesday morning and I asked your secretary simply to tell you that please don't enter an order approving the settlement until you received my letter which would be mailed that day.

A few hours later, I believe it was in the range of 12:00 to 1:00 o'clock Chicago time, you were kind enough to call me. That was the first time we have ever spoken. You called me and told me, I think, the gist in these words:

A, you could not grant me time to do something because you were leaving on vacation and the case had dragged on for a while and you wanted to expedite it, but, B, there would be a hearing in your chambers this morning at 11:00 o'clock and you invited me to be present either personally or by representation or if I wanted to send a telegram.

That same day I started to prepare -- and I tell you so you will see that I am not trying to delay anything -- I tried to prepare the papers for this morning so that I would not even have to ask for a delay. It became apparent that I was not going to be able to complete them, but I thought I would have at least fifty, sixty percent done.

At 5:30 to a quarter of six last night, this is the beginnings of it, and my plane was scheduled to leave for New York at 7:45.

It became apparent that I was engaged in a program that could not possibly be consummated. It was insane for me to have tried to. It was just too complex. You couldn't do a professional job. The product I was putting out was not such as you are entitled to and I couldn't cover it.

I wanted to let you know, Judge, just so you would know what I was doing so the parties know because there are no secrets, I was preparing an affidavit in support of a multiple motion. Some of these motions are independent and some of them were in the alternative. They deal with your opinion, they deal with the hearing that was held, they deal with the proposed orders that have been submitted, they deal with some motions pending before you which I think you have not ruled on. I am not trying to bug you on those.

THE COURT: I have by now ruled on everything that is pending, except for one item I have to bring to Mr. Kornreich's attention, which is a proposed claim.

MR. PLOTKIN: I think I have filed a multiple motion, your Honor, and never received a ruling.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

THE COURT: Maybe I have overlooked it.

MR. PLOTKIN: I am not trying to harass you, but in my youth I believe I saw somewhere if there is no ruling on it and you don't attempt to get a ruling on it, it is not appealable.

THE COURT: If there is anything pending, I will rule on it. That you can do by letter.

MR. PLOTKIN: Anyway, at 6:00 o'clock last night I gave up the ghost , I threw the papers into a bag as best I could and I came here.

There are serious matters, your Honor. I know, I hope -- I must tell you I was distressed by the way I was treated in the opinion, because I thought -- I don't know what your motivation was and I am not, again, reflecting on that, but I want to tell you that I was somewhat hurt because people who will read that opinion -- it will be published nationwide -- I think, some of them, at least, will read it as indicating your view that I was a wrecker without cause and so forth, and I would hope that people don't think that.

THE COURT: I think that is a misconstruction .

MR. PLOTKIN: I feel badly about that and I wanted to tell you that. That is one of the reasons I feel sensitive here. I have a difficult problem. The Judge

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committed himself to a position on something and I think he is wrong.

I represent people. I would like to present my views to you in a forthright fashion without your thinking I am here to fill my pockets. I think the record will indicate otherwise I don't mind making money, but that is not the situation here.

I need some time to give this thing a credible job and it is one I ask your Honor to read carefully because I think there are things here that really warrant your consideration.

If you permit me to say one thing that I was going to stress in the affidavit:

The nature of objecting to a settlement in a class action as such, you know, creates a tension and a friction between the objector and the Court very often.

THE COURT: Yes.

MR. PLOTKIN: The Court has committed itself to a position, at least preliminarily.

THE COURT: There I disagree with you.

MR. PLOTKIN: I believe that that happens in my experience. And I have been the beneficiary of that at times, too. I am not saying that I am the victim of a plot or anything.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 10007

THE COURT: It isn't that the Court has committed itself to anything, because I do not think that setting a matter down for a hearing on a proposed settlement indicates in the slightest that the Court thinks that the settlement is fair or feasible. The whole purpose of the hearing is to hear what it is all about and determine whether it is fair or feasible.

The one thing I will agree with you about is that Judges like to see cases settled and, therefore, they may have a tendency to be unahppy when somebody opposes a settlement, but not because they have committed themselves in advance to a particular form of settlement.

And I may say that the settlement of this case has been much more difficult for me than if I tried the bloody thing. I could have tried it in two or three weeks and finished.

MR. GOLOMB: Except the question of damages, which you might have had a problem with.

THE COURT: I would have left it to a jury.

MR. PLOTKIN: The only two points I want to stress at this time are these:

One is -- and I don't want you to interpret this the wrong way -- please, I hope you will read my submission with a view other than Plotkin doing everything he can to

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FOLEY SQUARE, NEW YORK, N.Y. -- 791-1020

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upset this. I really do.

THE COURT: Mr. Plotkin, may I say this:

You have been straightforward in the description of your feelings and what you consider to be the special dynamics of the situation.

Don't think of it in terms of a self-centered place. I have really lost very little sleep at night thinking that Plotkin is a wrecker.

I will say that I felt that a disproportionate amount of time and energy was spent by you and, therefore, occasioned my spending with regard to the significant issue that you raised, although I must say that I think the kind of work that you turn out is very, very creditable and of a good quality.

I would like to cut the whole case down to size, you know what I mean. Even though we are talking about $1,350,000 here, we are not talking about a $1,350,000,000.

Among the other realities in the world that a person who is charged with the responsibility of being a United States District Judge is that there are three, four hundred cases he has to deal with and he has to be sensible about the amount of time that he spends on any of them.

An enormous amount of time and energy and thought has been spent by the Court on this case and I don't

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FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

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see it at the moment as anything more than a case in which one out of a number of lawyers disagrees with my disposition of the matter.

I am comforted by the fact -- of course, this is not the first time that a lawyer has disagreed with me -- that there will be three very wise colleagues of mine who will review your contentions and tell me if I was wrong, and I have been told that I was wrong. And if they do, fine, then that will be the disposition of the case instead of mine.

So let's wind it up this way:

If there is anything you have on your mind, try and get it back into the form of a letter, even if it is a long letter, and send it to me.

I will say this:

At the moment, I know of no reason why I would entertain any motions which I would allow to extend for any substantial period of time the signing of an order in this Court, because I think that it is in the interests of the class that the matter be moved along.

It is not my interest. I do not care if I sign an order or not.

I regret that the passage of time seems to have had some disadvantagous results as far as the class is

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FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

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concerned already, because we would not have had to have this kind of a meeting, I am led to believe, anyway, if my order had come down earlier when there was not the financial crunch that there is at the moment.

I will be glad to receive a letter from you. I will give it good faith consideration. But I don't think that it is likely that I will defer the signing of an order beyond a week from now.

Bearing that in mind, if there is any additional provision which you believe ought to be included in the order, you are free to suggest that, too.

MR. PLOTKIN: All right.

I will put it in a more formal posture.

THE COURT: To protect yourself.

MR. PLOTKIN: I will get it in by a week from today.

THE COURT: A week from today will not do you any good. I will be gone by the end of that day.

MR. PLOTKIN: I will get it in the day before. I have a transportation problem. It takes so long, even if you send it air freight.

(Discussion held off the record)

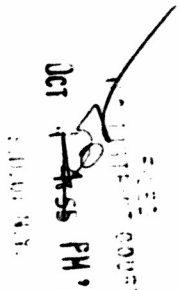
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NOTICE OF APPEAL

5.00 pd

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERTRUDE J. BOWNE
LILLIAN OLDEN
PLAINTIFFS
-AGAINST-
JOHN C. DOYLE
WILLIAM M. WISMER
CANADIAN JAVELIN LTD.
DEFENDANTS



NOTICE OF ~~APPEAL~~

73 CIVIL 5117
MEL

THE UNDERSIGNED, SAMUEL H. SLOAN, HEREBY APPEALS FROM ALL PARTS OF THE JUDGMENT OF THE HON. MORRIS E. LASKER ENTERED IN THIS CASE WHICH APPROVED THE STIPULATION OF SETTLEMENT AND DISMISSED THE ACTION WITH PREJUDICE

SAMUEL H. SLOAN
917 OLD TRENT'S FERRY RD.
LYNCHBURG, VA. 24503
(804) 384-1207
(PRO SE)

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EX' A—STIPULATION IN LURIE ET AL V. CANADIAN JAVELIN LTD. FILED OCTOBER 29, 1976 (Pages A360-A379)

FILED
OCT 29 1976
MATTHEW J. DANAHER, Clerk

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FAYE LURIE and H. HASKELL LURIE, Plaintiffs,	)	
v.	)	No. 73 CH 7442
CANADIAN JAVELIN LIMITED, WILLIAM M. WISHER and JOHN C. DOYLE, Defendants.	)	

STIPULATION OF SETTLEMENT

WHEREAS, plaintiffs commenced this action in this Court on their own behalf and on behalf of all other persons (except defendants herein) who purchased common stock of Canadian Javelin Limited during a period commencing on November 1, 1969, in which action plaintiffs alleged that defendants violated Sections 5 and 17(a) of the Securities Act of 1933, the common law, and the Illinois Securities Law of 1953; and

WHEREAS, among other things, defendants are alleged to have disseminated false and misleading statements, and to have omitted to disclose material facts as required by law, concerning (1) the Linerboard Project undertaken by Canadian Javelin Limited in Newfoundland, Canada and related matters, including but not limited to an amount claimed from the Government of the Province of Newfoundland and Labrador in connection with the purchase by that Government of the aforesaid Linerboard Project; (2) the Cerro Colorado

Project in Panama and related matters; (3) the Julienne Lake Venture in Newfoundland and related matters; (4) a mineral concession in Veraguas Province, Panama and related matters; and (5) certain other matters - which said statements and omissions are alleged to have artificially inflated the market price of Canadian Javelin Limited common stock during the Class Period as defined below; and

WHEREAS, prior to the commencement of this action, claims, similar to many of the claims set forth herein, were asserted under similar statutes in a class action against these same defendants in the United States District Court for the Southern District of New York in an action entitled "Gertrude Boni and Lillian Olden v. John C. Doyle, William M. Wisner, Canadian Javelin Limited, 73 CIV 5117" ("the Bonime case"); that the class certified in the Bonime case (which is also defined below) included, with some exceptions, all persons who purchased Canadian Javelin Limited common stock between April 30, 1969 and October 24, 1973; that pursuant to a compromise and settlement which has been approved by the federal court in Bonime, Judge Morris E. Lasker of the United States District Court for the Southern District of New York, by his Order entered August 9, 1976, dismissed the Bonime case on the merits and with prejudice; that the aforesaid Order, among other things, enjoined the continued prosecution, against these defendants, of any claim or claims which have been or might be asserted arising from or relating to the matters alleged in the Bonime case against these defendants on behalf of any members of the Bonime class who did not opt out or on behalf of any persons who filed claims in the Bonime case which claims were rejected by the parties; and

WHEREAS, the Court in this action has determined and certified this action to be a proper class action; and

WHEREAS, defendants, and each of them, have served and filed answers to the complaint, as amended, ("amended complaint") in this action, which answers deny the material allegations thereof, deny liability and demand dismissal of the amended complaint; and

WHEREAS, defendants, and each of them, continue to deny any wrongdoing whatsoever and consider that this action is without merit, but that it is nevertheless desirable and in the best interests of all concerned, including plaintiffs and the persons on whose behalf this action was instituted, that this litigation be terminated without further legal proceedings, thus avoiding the expense of such proceedings and the expenditure of time thereon by the defendants, including the officers and directors of Canadian Javelin Limited; and

WHEREAS, the attorneys for the plaintiffs have conducted an extensive investigation of the facts and the law relating to the matters set forth in the pleadings herein; have conducted extensive pre-trial discovery proceedings, including the analysis of thousands of pages of documents and records produced by Canadian Javelin Limited and public records bearing on the issues herein, and have conducted extensive negotiations with the attorneys for the defendants; and

WHEREAS, in view of all the existing circumstances, the attorneys for the plaintiffs have concluded that settlement of this litigation upon the terms and conditions specified

in this Stipulation of Settlement is in the best interests of plaintiffs and the other members of the class whom they represent;

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and among the undersigned that this action and all individual and class claims which have been asserted in the amended complaint shall be settled and compromised, subject to and conditioned upon the approval of the Court, in the manner and upon the terms and conditions set forth hereinafter;

Definitions

1. As used herein, the following terms shall have the following meaning:

A. "Effective Date" means the date following the entry of the judgment Order as provided for in paragraph 16 below when, by lapse of time or otherwise, such judgment shall no longer be subject to review by or appeal to the Illinois Appellate Court, the Illinois Supreme Court or the United States Supreme Court.

B. "Bonime Class" means the class certified in the Bonime case, which is as follows: All persons who bought the common stock of Canadian Javelin Limited during the period from April 30, 1969 through May 31, 1972 (First Class Period) or during the period from June 1, 1972 through October 24, 1973 (Second Class Period) and their heirs, successors by operation of law and their legal representatives, but excluding any person who was a director, officer or employee of Canadian Javelin Limited at any time during the period from April 30, 1969 through October 24, 1973 and their successors or assigns and their family members or any trust in which they are trustor, trustee, or beneficiary,

or any person who had access to information not publicly available concerning the Linerboard Project, the amount which was claimed by Canadian Javelin Limited from the Newfoundland government or the project to exploit mineral resources in Panama, as well as any person who requests exclusion from the class in accordance with the procedures of Rule 23 of the Federal Rules of Civil Procedure.

C. "Luric Class" includes all persons (except defendants herein) who purchased Canadian Javelin Limited common stock during the period from November 1, 1969, through and including December 19, 1974, suffered a loss thereby and who, in addition:

(1) were not included within the definition of the Bonime Class; or

(2) were members of the class certified in Bonime but who opted out of the Bonime settlement; or

(3) were members of the class certified in Bonime and who submitted a proof of claim for participation in the Bonime settlement which proof of claim was rejected without proper notice to the claimant of his right to a hearing; or

(4) purchased Canadian Javelin Limited common stock during the period from October 25, 1973 through and including December 19, 1974; provided, however, that this clause (4) is limited to purchases made by or for the benefit of persons who on the date of purchase were residents of the United States, including its territories and possessions, or Puerto Rico.

Purchases made for the benefit of a person (whether or not the purchase was made in the name of such person) who on the date of purchase was an "insider" as defined below shall not qualify the purchaser as a member of the Lurie Class and shall not be included in calculating a claim under this settlement.

D. "Insider" means a person who on the date of purchase (1) was a director, officer or employee of Canadian Javelin Limited or a successor, assign or member of the family of such person, or any trust of which such person or successor, assign or member of the family of such person was a trustor, trustee or beneficiary; or (2) had access to material information not publicly available concerning the Linerboard Project referred to above, or the amount referred to above which was claimed by Canadian Javelin Limited from the Newfoundland Government, or the Cerro Colorado Project referred to above;

E. "First Period" means the period from November 1, 1969 through May 31, 1972, both dates inclusive;

F. "Second Period" means the period from June 1, 1972 through October 24, 1973, both dates inclusive;

G. "Third Period" means the period from October 25, 1973 through December 19, 1974, both dates inclusive;

H. "Entire Class Period" means the period from November 1, 1969 through December 19, 1974, both dates inclusive;

I. "Fund Distribution Date" shall be the 10th day (or if such day is not a business day, then the next succeeding business day) following the Effective Date;

J. "Person" includes, without limitation, any individual, corporation, partnership or other entity;

K. The date of purchase or sale of shares of

Canadian Javelin Limited common stock shall be the "Contract" or "Trade" date, as distinguished from the "Settlement" date.

2. On the Effective Date, defendants shall pay into a Settlement Fund ("Settlement Fund" or "Fund") a sum as determined by this Court pursuant to the provisions of paragraph 6, in such proportions as they shall agree among themselves, to be distributed in accordance with this Stipulation and by Order of this Court. Said payment, together with defendants' performance of their other obligations hereunder shall constitute a full and final settlement and discharge of all claims arising out of or relating to the matters set forth in the amended complaint against any and all defendants, their predecessors, successors, assigns, officers and directors, and each of them.

3. The payments to the Settlement Fund by the defendants shall be in the form of cash.

4. Every class member, not excluded from the Lurie Class as defined in paragraph 1C above, who purchased Canadian Javelin Limited common stock during any of the aforesaid class periods and who suffered a loss, as hereinafter determined, shall be entitled to share in the Settlement Fund established herein to the manner and to the extent provided below.

Computation of Gross Claim
of Each Class Member

5. The gross claim of each Lurie Class member who has sustained a loss shall be determined in the following manner. With respect to all shares purchased during the First Period, the gross claim shall be the difference between

the purchase price of the shares and the greater of (i) the selling price of the shares or (ii) the closing price of the stock on the American Stock Exchange on the first day of trading after May 31, 1972. With respect to all shares purchased during the Second Period, the gross claim shall be the difference between the purchase price of the shares and the greater of (i) the selling price of the shares or (ii) the closing price of the stock on the first day trading was resumed on the American Stock Exchange after October 24, 1973. With respect to all shares purchased during the Third Period, the gross claim shall be the difference between the purchase price of the shares and the greater of (i) the selling price of the shares or (ii) the closing price of the stock on the Montreal Stock Exchange on December 20, 1974. The purchase price of the shares shall be the price paid for the stock, exclusive of brokerage costs and any other expenses of purchase. The selling price of any of the stock sold shall be the sale price, exclusive of brokerage expenses and any other expenses of sale. In computing the claim of each class member, any profit from a sale in the period from November 1, 1969, to and including the date of mailing of the notice of hearing hereinafter provided for, of Canadian Javelin Limited common stock purchased during the First, Second, or Third Class Periods, shall be deducted from losses.

Computation of Distribution From Settlement Fund

6. The distribution to each member of the Lurie Class who does not opt out shall be computed as follows:

A. Each prospective claimant in the Lurie Class will submit a verified Proof of Claim in such manner and form as directed by the Court.

B. The losses incurred by each member of the Lurie Class, as evidenced by each individual Proof of Claim submitted here, would then be totaled to determine the total losses incurred by the Lurie Class.

C. The proportional recovery factor of the Bonime Class shall be determined by dividing the total accepted losses of the Bonime Class (which, as in the instant case, will represent the total of all losses evidenced by all Proofs of Claim filed and accepted in Bonime) into the total net payout from the Bonime Settlement Fund to the Bonime class members who are entitled to participate in that settlement (i.e., $1.35 million less attorneys' fees and costs yet to be determined).

D. The individual loss of each Lurie Class member would be multiplied by the proportional recovery factor of the Bonime Class, as computed in paragraph C immediately above. Accordingly, this computation would determine the total Settlement Fund available to the Lurie Class and the net payout or distribution to each individual member of the Lurie Class.

Supervision of Distribution

7. The Fund will be distributed on the Fund Distribution date to members of the Lurie Class whose Proofs of Claim are allowed. This distribution will be implemented by a Court-appointed trustee. Said trustee will act pursuant to and under the Court's supervision and directions.

All expenses of administration in consummating the settlement and in notifying the class will be borne by Canadian Javelin Limited.

8. If, after distribution of the Fund in accordance with this Stipulation of Settlement and Order of this Court, there is any balance remaining in the Fund, such balance shall be returned to Canadian Javelin Limited.

Attorneys' Fees and Expenses

9. In addition to all other payments provided for elsewhere in this Settlement Stipulation, defendants shall be jointly and severally liable to pay (a) attorneys' fees to plaintiffs' attorneys and (b) all expenses (exclusive of attorneys' fees) incurred or advanced by plaintiffs or their counsel. The affidavit of plaintiffs' counsel, setting forth the expenses by category rather than in detail, shall be sufficient to require payment thereof. Counsel for the parties shall attempt to negotiate the amount of attorneys' fees to be paid to plaintiffs' counsel. In the event they shall be unable to agree on such amount, or on the amount of expenses to be paid hereunder, then any party may at any time petition the Court to set the amount of attorneys' fees or expenses to be paid hereunder, and the Court shall do so. The amount of attorneys' fees to be awarded plaintiffs' counsel in this action shall not, in any manner, be based, directly or indirectly, upon the result obtained or benefit conferred upon the Bonime Class in the Bonime case. The Court's decision as to fees shall be appealable by any party. Provided, however, that in the event such an appeal is taken, the Court's decision as to the amount of fees to be paid to plaintiffs' counsel shall

not be reversed or modified unless the Court's decision thereon is found to constitute an abuse of the Court's discretion.

10. The following rules shall be applied in determining the membership of the Lurie Class and the dollar amount of individual claims in distribution of the Fund:

A. Any person who acquired shares of Canadian Javelin common stock by gift, bequest, devise or by way of intestate succession may submit a claim and participate in the Settlement Fund if his predecessor in interest would have been qualified to do so and shall assume the purchase price and the date of purchase of his predecessor in interest for purposes of determining his entitlement to recover hereunder.

B. On the Fund Distribution Date, there shall be paid to each class member whose claim has been allowed, an amount computed in accordance with paragraph 6 above.

11. In the event that the Court does not approve this Stipulation of Settlement and its failure to approve becomes final by reason of its affirmance on appeal or by lapse of time or otherwise, or in the event the Court approves this Stipulation of Settlement but such judgment of approval is finally reversed on appeal, this Stipulation of Settlement and the Order to be entered pursuant to paragraph 16 hereof shall be of no further force or effect without further act by any party to this Stipulation of Settlement, and no hearings or proceedings taken thereunder, including the decision thereon, and no fact referred to in such hearings or proceedings shall be considered or used as evidence or for any other purpose in this or any other proceeding.

Further, the Stipulation of Settlement and any negotiations, statements and proceedings in connection therewith shall not in any event be construed as or deemed to be evidence

or any admission or concession on the part of the defendants, or any of them, named in this action of any liability or wrongdoing whatsoever, which is hereby expressly denied and disclaimed by each of the said defendants, and shall not be offered or received in evidence in any action or proceeding in any court or tribunal or used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature on the part of any of the said defendants.

Preliminary Order to be Entered

12. As soon as practicable after this Stipulation of Settlement has been executed, the attorneys for the parties shall move for approval of this Stipulation of Settlement and for the entry of the judgment referred to in paragraph 16 hereof. As part of said motion, application shall be made for an order, consented to by all of the parties hereto:

A. Directing that this action may be maintained as a class action on behalf of the Lurie Class and that notice be given to members of the Class within 60 days after issuance of said Order in such manner and form as shall be directed by the Court;

B. Requiring that any member of the Class desiring to participate in the Fund file with the Clerk of the Court or such person as the Court may designate a verified Proof of Claim in such form as is directed by the Court no later than 60 days after said Notice is issued;

C. Directing that a hearing be held by the Court within 90 days after said Notice is issued on such day and time as may be designated by the Cou for the purposes of determining whether this Stipulation of Settlement is fair, reasonable and adequate and should be approved and a judgment

entered as provided in paragraph 16 hereof;

D. Directing that notice of the hearing referred to in C above be given not later than 60 days after issuance of the order to members of the Class and to all present stockholders of Canadian Javelin Limited in such manner and form as shall be approved by the Court;

E. Providing that the notice required under sub-paragraphs A and D hereof be given: (i) by mailing a copy of such notice within 60 days after the entry of the order requiring such notice to all stockholders of Canadian Javelin Limited as shown by the stock records of Canadian Javelin Limited at the address set forth on such records as of 30 days prior to the entry of the order (in the case of shares registered in street name, Canadian Javelin Limited shall supply brokerage firms with sufficient copies to mail to all beneficial owners and Canadian Javelin Limited shall reimburse brokerage firms for postage expenses for mailings to beneficial owners), to all members of the class who are no longer stockholders of Canadian Javelin Limited and whose names and addresses can be ascertained by reasonable diligence either through the records of Canadian Javelin Limited or the records of the Canada Permanent Trust Company, the transfer agent for Canadian Javelin Limited stock, at the address on such records, and (ii) by publication once in the New York Times, the Chicago Tribune, all national editions of the Wall Street Journal and the Toronto Globe & Mail;

F. Providing that the notice specified in sub-paragraph [illegible] hereof shall constitute due and sufficient notice of the hearing to all persons entitled to receive such notice, and requiring that proof of mailing and publication be filed at or prior to the hearing;

G. Providing that any stockholder or member of the Lurie Class who objects to approval of this Stipulation

of Settlement or to the judgment to be entered hereon may if said Class member does not exclude himself pursuant to subparagraph I below, appear at the hearing and show cause why the settlement proposed herein shall not be approved as fair, reasonable and adequate and why a judgment should not be entered hereon. Unless the Court otherwise directs, any stockholder or Lurie Class member who wishes to appear at the hearing for the purpose of objecting to the settlement proposal herein shall submit a written objection to approval of the settlement, such written objection and any memorandum in support thereof shall be filed with the Court at least 10 days prior to the hearing set by the order and copies thereof shall be mailed on or before filing with the Court to Robert Plotkin, 55 East Monroe Street, Suite 4005, Chicago, Illinois 60602, attorney for the plaintiffs; Michael B. Roche, Roger J. McFadden of Hubachek, Kelly, Rauch & Kirby, 3100 Prudential Plaza, Chicago, Illinois 60601, attorneys for Canadian Javelin Limited; and Moses Krislov, 800 Engineers Building, Cleveland, Ohio 33114, attorney for defendants John C. Doyle and William M. Wismer. Proof of Service upon the aforesaid attorneys shall also be filed with this Court;

H. Providing that, unless the Court otherwise directs, no stockholder or member of the Class shall be entitled in any way to contest the approval of the terms and conditions of this Stipulation of Settlement or the judgment to be entered herein except by serving and filing written objection in accordance with subparagraph G above and that any stockholder or member of the Class who fails to object in the manner prescribed shall be deemed to have waived and shall be foreclosed forever from raising objections;

I. Requiring, that any member of the Class who desires to be excluded from the Class request exclusion in writing by filing a request for exclusion with the Court by a date designated in the order, which will not be later than 10 days before the hearing and any member of the Class who has so excluded himself shall not be entitled to participate in the Fund.

Proofs of Claim

13. The following conditions shall apply to the filing of each Proof of Claim:

A. Claims may be submitted either by the person in whose name shares were purchased or by the person for whose benefit they were purchased. The Proof of Claim shall be executed under oath, in the form approved by the Court, and shall be accompanied by brokers' confirmations or monthly account statements relating to all purchases and sales of Canadian Javelin Limited common stock prior to and during the Class Period if such confirmations or account statements are in the possession or under the control of the claimant;

B. By filing a Proof of Claim, each class member thereby submits himself to the jurisdiction of the Court. Each Proof of Claim shall be subject to investigation and discovery and upon acceptance of said Proof of Claim and upon receipt by each class member of his distributive share of the Fund each class member thereby releases the defendants, their predecessors, successors, heirs, assigns, officers, directors, partners, and former partners, employees and attorneys and each of them of all claims and demands arising from or relating to the matters alleged in the amended com-

plaint or arising from or relating to the consummation of the terms of this Stipulation of Settlement;

C. All Proofs of Claim will be subject to review by the Trustee described in paragraph 7 above; and by Robert Plotkin; Michael B. Roche, Hubachek, Kelly, Rauch & Kirby; and Moses Krislov and they shall agree as to the rejection, in whole or in part, of any claim. In the event the aforesaid Trustee and the parties' counsel do not agree as to the rejection of a claim, that disagreement shall be presented to the Court for determination subject to the provision of subparagraph D below. In no event will any claim be rejected in whole or in part without the approval of the Court. A Proof of Claim will be deemed accepted unless a proposal to reject such Proof of Claim has been presented to the Court no later than 20 days after the last day for the filing of Proofs of Claim;

D. If any Proof of Claim is rejected, in whole or in part, Notice of Rejection thereof shall be given to the person filing said Proof of Claim no later than 20 days after the last day for filing of Proof of Claim, advising said claimant of the reason for such rejection and of the right to a hearing thereon. Within 30 days after the date of mailing of such Notice of Rejection, the class member may file with the Court a written request for a hearing, and a copy of such request shall be mailed to the Trustee described in paragraph 7 above and to Robert Plotkin, Michael B. Roche, and Moses Krislov, on or before the date it is filed with the Court. In the event that no such request for hearing is received within said 30 day period, the class member shall be deemed to have con-

sented to rejection of his Proof of Claim. Notice of all hearings upon any claim relating to participation in the Fund or its rejection shall be given by the Court to counsel for all parties;

E. In the event that (i) a member of the class prevails at the hearing with respect to his rejected Proof of Claim, in whole or in part, and the Court's decision is no longer subject to review or appeal, or (ii) such class member prevails on appeal, the amount awarded to the class member shall be paid to him.

14. The administration of the settlement and the decision of all controversies relating thereto, including disputed questions of law and fact relating to the validity of claims and the manner of proving claims, shall be under the authority of the Court and may, subject to the Court's discretion, be submitted in whole or in part to the Trustee described in paragraph 7.

15. Any Lurie Class member who fails to make a timely filing of an adequate Proof of Claim shall be forever barred from participating in the distribution of the Fund, but shall in all other respects be subject to the provisions of this Stipulation of Settlement. Each Proof of Claim shall be deemed to have been filed when posted, if mailed by registered or certified mail, postage prepaid, addressed in accordance with the instructions given therein. A Proof of Claim filed otherwise shall be deemed to be filed at the time it is actually received by the Clerk of the Court or such other person as may be designated by the Court to receive same.

16. Upon the approval by the Court of this Stipulation of Settlement, including any amendments hereto, a judgment

shall be entered in the appropriate form: (a) approving this Stipulation of Settlement, and adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions and retaining jurisdiction to effectuate the same and to deal with the failure of any of the party signatories to comply with the terms, provisions and obligations flowing therefrom; (b) awarding fees and reimbursement of expenses to attorneys for plaintiffs or retaining jurisdiction for such purposes; (c) permanently restraining and enjoining each of the defendants and their respective officers, agents, servants, employees, directors, and those persons in active concert and participation with any of the defendants, from, directly or indirectly, making or inducing or encouraging the making of any materially false or misleading statements of, or omitting to state, material facts concerning or relating to Canadian Javelin or any of its subsidiaries or affiliated companies, including but not limited to the financial condition, business or securities of Canadian Javelin or any of such subsidiaries or affiliated companies; (d) dismissing this action on the merits and with prejudice as against the plaintiffs, the class, and all defendants; (e) permanently barring and enjoining the institution or prosecution by any class member either directly or representatively of any other action asserting claims which have been or might be asserted arising from or relating to the matters alleged in the amended complaint; (f) releasing plaintiffs, and Sylvia Einstein, their agents and attorneys from any and all claims by or liability to defendants, or any of them, or the directors, officers, agents, servants and attorneys of any of the defendants; (g) reserving

jurisdiction over all matters relating to the administration and effectuation of the settlement and compromise provided for herein, including the distribution of the Fund, and (h) containing such other and further provisions consistent with the terms and conditions of this Stipulation of Settlement as the Court may deem advisable.

17. It is further stipulated and agreed by and between the undersigned that promptly upon the submission of this Stipulation to the Court, the parties hereto shall, pursuant to Rule 42, Fed.R.App.P., execute and file with the clerk of the United States Court of Appeals for the Second Circuit, an agreement for the voluntary dismissal of the appeal filed in the Bonime case by the plaintiffs herein and by Sylvia Einstein. In addition, the plaintiffs and defendants, jointly, shall move the United States District Court for the Northern District for entry of an agreed order staying further proceedings in Case No. 73 C 3086 pending in said court. Upon completion of the payment hereunder to the Lurie Class, the plaintiffs shall promptly move the United States District Court for the Northern District of Illinois to dismiss Case No. 73 C 3086 in its entirety. All costs incident to the latter dismissal (including all expenses of giving notice to the Class if such notice shall be required) shall be borne by defendants

18. All of the defendants hereby submit themselves to the jurisdiction of the Court and withdraw and waive all objections to the Court's jurisdiction which they have asserted or might assert.

19. All other matters not expressly covered by the provisions of this Stipulation of Settlement are to be resolved as directed by the Court.

20. This Stipulation of Settlement may be executed in two or more counterparts.

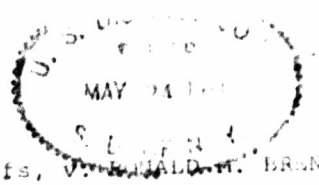
Dated:

ROBERT PLOTKIN
Attorney for Plaintiffs

MICHAEL B. ROCHE
HUBACHEK, KELLY, RAUCH & KIRBY
Attorneys for Defendants John C. Doyle, William M. Wismer and Canadian Javelin Limited

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EX' B—MEMORANDUM DECISION OF JUDGE LASKER DATED MAY 23, 1974 IN THEOFILAKOS V. BRENHOUSE, 73 CIV. 2150



ENDORSEMENT

PETER THEOFILAKOS, et al., Plaintiffs, v. DONALD M. BRENHOUSE, et al., Defendants. 73 Civ. 2150

LASKER, D.J.

Plaintiffs' motion pursuant to Rule 23, Federal Rules of Civil Procedure, in which defendants join for an order that this action proceed as a class action. The amended complaint alleges violations of [illegible] ties Exchange Act, 15 U.S.C. 78j(b) and [illegible] in connection with the offer and sale of [illegible] the corporate defendants. As a result of [illegible] the Attorney General of the State of New York has brought proceedings in State court and obtained the appointment of a Martin Act receiver over the assets of the corporate defendants. The parties in the present action have reached a tentative settlement under which plaintiffs [illegible] in proportion to their [illegible]

This is the result a [illegible] for the [illegible] class action at bar, since Rule 23 [illegible] and [illegible] of [illegible] are not [illegible]. The [illegible] class [illegible] clear, [illegible] [illegible] and [illegible] its [illegible] plaintiffs' [illegible] all [illegible] class. This [illegible] [illegible] Act, [illegible] Rule [illegible] Side Tender [illegible] etc.

[illegible] plaintiffs' counsel [illegible] conference of the [illegible] parties [illegible] of plaintiffs' class may have some [illegible] [illegible] stake in [illegible] defendant's shares they [illegible] however in view of the fact that [illegible] settlement [illegible] and [illegible] take into [illegible] ability of [illegible] the [illegible] settlement, [illegible]

Submit order on notice.

Dated: New York, New York
May [illegible], 1974.

Robert L. Baker

U.S.D.J.

A380

BEST COPY AVAILABLE

SLOAN

AFFIDAVIT OF PERSONAL SERVI[illegible]

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 3 day of Jan. ,19 77 at No. 845 Third Ave., NYC 10022

deponent servied the within Joint Appendix upon Wolf, Popper, Ross, Wolf & Jones, Esqs.

the Plaintiffs-Appellees herein, by delivering 1 true copy(ies) thereof to them personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Plaintiffs-Appellees therein.

Sworn to before me this
3 day of Jan. 197 7

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978